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GUIDE TO COMMUNITY ENGAGEMENT FOR POWER PROJECTS IN KENYA

ACKNOWLEDGEMENTS

Many individuals and organizations contributed to the development of this *Guide to Community Engagement for Power Projects in Kenya*. This guide blends the ideas, input, and vision of a wide range of Power Africa partners, including the Government of Kenya, energy sector parastatals, power project developers, Kenyan and international finance institutions, civil society, and representatives of Kenya's many diverse communities.

Finally, a special acknowledgement to the staff in Power Africa's Coordinator's Office at USAID, the team at USAID Kenya, and all the staff across U.S. government agencies and departments involved in developing and reviewing this guide.

DISCLAIMER

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Guide to Community Engagement for Power Projects in Kenya

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PREFACE

The work of increasing access to electricity in sub-Saharan Africa involves a diverse array of participants, from power project developers and financiers, to local government agencies, civil society organizations, and the everyday users of electricity themselves. Often, the most successful power projects are those that streamline the path to financial close by ensuring that the concerns and needs of all parties are heard and addressed at every stage of the development cycle.

In Kenya, some recent power projects have experienced challenges, delays, and terminations stemming from insufficient engagement with communities and other stakeholders. A common theme in these cases is that community engagement either started too late, or did not adhere to international benchmarks, such as the International Finance Corporation's Performance Standards on Environmental and Social Sustainability.

As part of our support to the Government of Kenya, and to advance our shared goals of bringing new and more reliable electricity to communities across the country, Power Africa produced this *Guide to Community Engagement for Power Projects in Kenya*. This guide is designed to help power generation and transmission project developers plan and conduct more effective, comprehensive, and transparent community engagement, with an emphasis on creating positive outcomes for all.

Power Africa believes that genuine, robust community engagement from the early stages of project development and all the way through to commissioning, should be a core business best practice. Indeed, community engagement should be embraced as a means to help de-risk projects, keep transactions on track, and create shared value for companies and local stakeholders.

While this guide was conceived with large-scale power developers in mind, it can be applied by all infrastructure project developers working in Kenya, large or small.

It is our wish that this guide will serve as a practical manual for developers to conduct more effective community engagement programs, that will ultimately lead to win-win projects for the community, the companies investing in Kenya, and for the country as a whole.



**Andrew M. Herscowitz, Coordinator
Power Africa**

FOREWORD

For those of us privileged to live and work in Kenya, it is easy to see that her true power is in her people. The diversity, traditions, and pride of Kenyans are at the heart of the country's great beauty, and success.

In my time as Ambassador, I have had the pleasure and fortune to visit communities from the capital to the coast, farmlands to fishing villages, city neighborhoods, rural schools, and a vibrant mosaic of places in between. Each of these communities is home to people who strive to build better lives for themselves and their families. Increasing access to electricity for the people, schools, hospitals, and businesses in these communities is a cornerstone for improving lives and livelihoods.

Through Power Africa, the United States has collaborated closely with Kenya's government ministries, energy utilities, private sector companies, and entrepreneurs to expand access to electricity across the country. Power Africa is making it easier for developers, financiers, and civil society to join forces on the power projects Kenya needs to sustain its positive trajectory.

This Guide to Community Engagement for Power Projects in Kenya is a critical addition to the Power Africa partnership. It is designed to advise power project developers on the most meaningful and empowering approaches to community engagement, and to help deliver reliable electricity in a way that values Kenyan law, Kenyan cultures, and, most importantly, Kenyan people.

Moreover, this guide is meant to help developers and communities avoid the kind of impasses that have hindered Kenyan infrastructure projects in recent years. These issues have not only impacted Kenya's ability to realize its development objectives, but also resulted in enormous opportunity costs for both the developers and the communities.

As a practical tool, this guide acknowledges the challenges of power project development and related community engagement, and recommends step-by-step actions to plan for, conduct, and monitor robust community engagement. Case studies and real-world examples from the Kenyan context also provide tips for what has worked for infrastructure developers, as well as what to avoid. The

guide collects the wisdom gleaned from our collective experiences, as well as international best practices customized to local context.

I encourage developers to put this guide to good use. Share it with your team. Take note of best practices and plan for shared success.

Together, we can help shape the future for Kenya and Kenya's people.

Asanteni sana.



Robert F. Godec
U.S. Ambassador to Kenya



EXECUTIVE SUMMARY

Kenya is an attractive market for power project development, supported by the Kenyan Government's goal to achieve universal access to electricity by 2020 and an investment-friendly climate. However, some recent energy generation and other development projects were stalled or halted by community opposition that was based on concerns over project impacts, land ownership, lack of consensus regarding benefit sharing, or a combination of these and other related issues.

More to the point: sometimes developers and communities have not engaged one another in a meaningful, timely, or productive way, leading otherwise good projects to get delayed or derailed altogether.

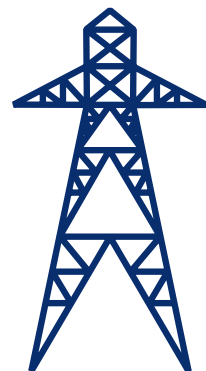
This guide is premised on the belief that developers and communities share mutually beneficial goals. For a developer, goals may include an efficient project development cycle leading to delivery of low-cost power and a profitable business model. For a community, goals may include appropriate mitigation for project impacts, compensation for land use, cultural protection, and/or other forms of benefit sharing. Of course, all parties stand to gain from increased access to electricity and the resulting economic boost.

Achieving these goals in a way that brings positive outcomes for all parties requires meaningful, consistent, and empowering community engagement.

WHAT IS COMMUNITY ENGAGEMENT?

This guide considers community engagement to be a full suite of communication and direct interaction with impacted communities that, ideally, leads to community consent for a project. The recommended engagement activities outlined herein are rooted in international best practices and Kenyan legal frameworks and are tailored for use in the Kenyan cultural context.

In fact, the Constitution of Kenya, as well as other national laws and regulations, contains a multitude of provisions regarding public participation. Public participation allows individuals and communities to contribute to decision-making processes by expressing concerns, needs, and values. This is the heart of community engagement.



WHY IS COMMUNITY ENGAGEMENT IMPORTANT FOR DEVELOPING POWER PROJECTS?

Power projects in Kenya, particularly those requiring new transmission lines, typically require a substantial amount of land. Land ownership is one of the most emotive and political issues in Kenya, meaning the land acquisition process can be extremely sensitive and challenging.

Unsurprisingly, land-related issues are the biggest source of community grievances against development projects. For these reasons, community engagement is critical to ensure accuracy and transparency in the land acquisition component of a project, to ensure fairness in compensation and/or other benefits shared with affected communities, and to understand and manage community grievances.

Indeed, the practice of engaging communities specifically and only to meet licensing and permitting requirements, or when troubles arise, is a practice that leads to community dissatisfaction. It is an approach that can very well lead to an environment of enmity between stakeholders and developers.

The Ministry of Energy and Petroleum (MoEP) and the Energy Regulatory Commission (ERC) require developers to obtain a record of “no objection” from the community within which the project is located prior to issuance of approval to proceed with the project.

Moreover, best practices from around the world demonstrate that community engagement should be systematically integrated into the core business activities of development projects to:

1. Achieve a lower overall risk profile for the project
2. Avoid the likelihood of disputes and/or grievances
3. Avoid cost and/or time overruns during construction

Therefore, community and stakeholder engagement should be afforded the necessary human and financial resources to support long-term project objectives.

Best practices also maintain that community engagement is not an event with a distinct start and end; rather it should be a continuous process that begins while determining project feasibility, increases concurrently with development of the base case and investment of capital, is maintained through the process of attracting finance through financial close, and is repeatedly monitored and evaluated so it can be enhanced throughout the project’s lifecycle.

INTEGRATING COMMUNITY ENGAGEMENT WITH THE PROJECT CYCLE

STAGE 1 Early Stage	STAGE 2 Project Development	STAGE 3 Arranging Finance/ Financial Close	STAGE 4 Project Construction & Completion
Determine project viability and base case option to support commitment of funding for feasibility study	Refine base case to support commitment of resources to develop the project and invest capital; Undertake long lead time activities and obtain authorizations	Structure project to attract finance; Arrange finance on terms and conditions sufficient to execute all project agreements; Reach financial close	Commence construction and reach commercial operations date (COD)

CONDUCTING COMMUNITY ENGAGEMENT

Conducting a strong community engagement program begins with an adherence to a core set of principles:



Step 1 is the Planning Phase, and entails staffing, budgeting, and stakeholder identification and mapping. Identifying and analyzing the project's stakeholders is essential to determine potential supporters and partners, as well as those who may oppose the project.

Step 2 is the Engagement Phase, and involves direct communication with stakeholders, community capacity building, negotiation processes, addressing grievances, and benefit sharing agreements.

Step 3 is Monitoring and Evaluation, where a developer can identify any room for improvement in their engagement activities, and calculate the return on their community engagement-related investments. A sample checklist of indicators to monitor is provided.

For sustainable developer/community relations, it is necessary to have continuous feedback between the community and the project developer throughout the project cycle and at each decision-making stage.

Finally, this guide presents a master checklist of community engagement activities and considerations, designed as a "to-do" list for power project developers in Kenya. Adhering to these best practices can help bring to fruition mutually beneficial projects desired by developers and communities alike.





Photo: Power Africa

Many rural communities, like this one in Narok County, are relatively isolated.

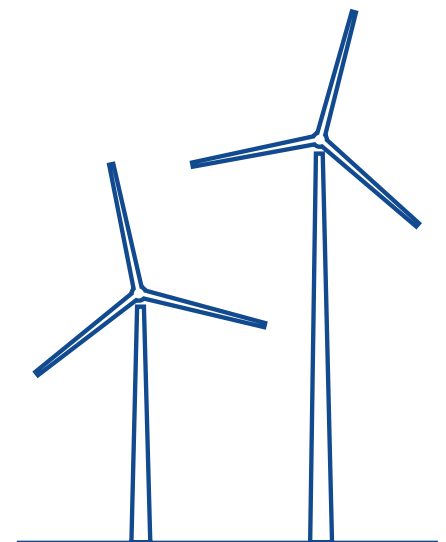
INTRODUCTION

Developers and sponsors of power projects aim to deliver new electricity services as quickly, safely, and economically as possible. Among the many important steps to be completed before “flipping the switch” is a comprehensive and meaningful community engagement process with the people and organizations that may be impacted by the proposed project. This *Guide to Community Engagement for Power Projects in Kenya* provides suggestions to help developers plan and execute successful community engagement efforts in Kenya, with a focus on creating positive outcomes for all.

Kenya has seen examples of both well-received and more challenged generation projects in recent years. Concerns have related to real or perceived health, environmental, cultural/social impacts, lack of consensus regarding compensation and/or benefit sharing, conflicting interests of different factions of the community or between the community and the developer, or a combination of any or all of the above.

A common theme regarding the failure of some large-scale development projects in Kenya appears to be that community engagement a) was not conducted as thoroughly as it could or should have been, b) did not start early enough, or c) was of sub-standard quality. Although public participation is required by law in Kenya,¹ there are a host of documented complaints of inadequate engagement, particularly related to claims of insufficient involvement by the community in decision-making.

Often, developers point to the length of time it can take for projects to reach financial close as a reason for not investing more in building their relationship with a community. This reasoning can result in an enormous opportunity cost, as effective community engagement may play a major role in reaching financial close by enhancing the project’s ultimate bankability. **This guide was developed to shed light on the importance of community engagement as good business practice and proposes an approach contextualized to the Kenyan situation.**



¹See “What does the Law Require?” section on page 14.

PURPOSE & OBJECTIVES

To advance our shared goals of bringing new and more reliable electricity to communities in Kenya, Power Africa developed this guide to specifically assist power generation and transmission project developers to plan and conduct more effective, robust, and transparent community engagement. While it was developed with large-scale power developers in mind, it can be of use to all infrastructure project developers working in Kenya, large or small.

The objectives of this guide are to:

- Provide a suggested model for developers to use for effective community participation and collaboration throughout the project lifecycle, to help projects reach financial close and achieve commercial operation to the benefit of the country;
- Identify the best methods for project developers to provide communities with balanced and objective information on proposed projects and to obtain their feedback;
- Develop strategies for developers to build strong and effective relationships with stakeholders, including the communities, regulatory officials, local and national government officials, etc.;
- Develop best practices for development projects in social and environmental engagement;
- Ensure integration of measures to promote gender equality in community engagement activities, including promoting women as leaders;
- Integrate considerations for marginalized groups within the community, including ethnic minorities, persons with disabilities, vulnerable women, and children;
- Provide tools for effective resolution of community issues during project implementation; and
- Continuously improve developers' community engagement practices through self-monitoring and evaluation of their activities.

A BUSINESS CASE FOR THOROUGH COMMUNITY ENGAGEMENT

To implement a robust community engagement strategy, developers should commit sufficient human and financial resources just as they would budget for other operational components of the project. Having the right people to manage this aspect of the project, equipped with an adequate budget with which to work, is as important as having the right engineers.

Adequately resourced community engagement serves as an effective risk mitigation strategy for both construction and operations phases of any project. Success in this regard may help project sponsors, investors, and lenders to:

1. Achieve a lower overall risk profile of the project, leading to more competitive financing terms/less onerous lender requirements, higher equity returns, and/or lower end-consumer tariffs;
2. Avoid the likelihood of any dispute resolution (and in extreme cases costly and lengthy litigation and/or arbitration);
3. Avoid cost and/or time overruns during construction, leading to funding shortfalls (and in extreme cases leading to prolonged or permanent default of the project, followed by a step-in by lenders and a partial or full loss of equity investment).

WHAT THIS GUIDE IS NOT

This guide does NOT replace the requirements of the policy, legal and regulatory framework in which any development project must operate in Kenya. At no point should this document or the contents herein be used as a sole or definitive source of information regarding the practices of development partners, financiers or investors.

This guide is not intended to be, and should not be used as, a substitute for legal advice.

HOW & WHEN TO USE THIS GUIDE

Stakeholder and community engagement is a continuous process required throughout a project's lifecycle. If conducted well, community engagement can both benefit local communities and pay important dividends in terms of avoiding or lessening delays due to unresolved community concerns, or even avoid costly lawsuits.

The approach of only engaging communities specifically to meet licensing and permitting requirements, or when troubles arise, is a practice that leads to dissatisfaction and a combative or defensive engagement with the community.

Community engagement should be regarded as a means to foster mutually beneficial and sustainable relationships between the developer and the community, with continuous feedback at each project decision-making stage, from development to construction to operation.

This guide is, therefore, intended to be used at every stage of the project cycle. The depth of engagement, its intended outcomes, and its nature is likely to change over time as a developer builds trust with the community. The principles set forth in this guide should, however, be observed at all times.

HOW WE DEVELOPED THIS GUIDE

This guide was informed by a triangulation of information from an assessment study conducted in 2016/2017, which consisted of:

- An analysis of the policies, laws, and regulations of Kenya dealing with public participation;
- A study of international good case practice in community engagement, including the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability, 2012², and other best practices from developers' experiences, contextualized for the Kenyan landscape;
- Observation of and consultation with various Power Africa stakeholders (including Non-governmental organizations (NGOs), developers, community organizations, all levels of government and financiers), as well as other infrastructure development actors who play an active part in stakeholder engagement with a focus on community engagement.



Photo: Power Africa/Ryan Kilpatrick

The solar carport at the Garden City Mall in Nairobi is Africa's largest commercial or industrial solar-as-a-service project.

²International Finance Corporation Performance Standards on Environmental and Social Sustainability, January 2012



Photo: USAID/Eric Onyiego

Traditional dances, like this one by the Turkana people, are often part of community engagement welcoming ceremonies.

THE CASE FOR COMMUNITY ENGAGEMENT

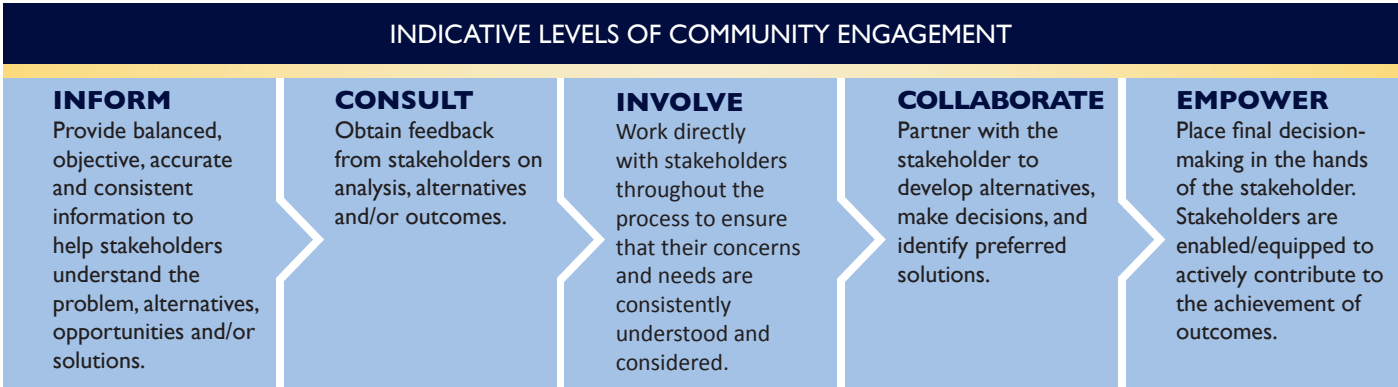
WHAT IS COMMUNITY ENGAGEMENT?

Before we can define *community engagement*, we need to consider what we mean by the word *community*. For purposes of this guide, *community* refers to a group of people who have common interests and values living in a definable geographic area that would host or be adjacent to, or otherwise impacted by, a proposed power development project.

Depending on the situation, community engagement can mean different things to different people. Sometimes it connotes simple communication with the community or education of the community, or what some call “sensitization.” Others use it in the context of extension

services, such as those provided by agricultural agencies, community health workers, etc. These approaches might be considered low levels of community engagement, of one-way communication or information delivery with the primary goal of delivering information.

The next level of community engagement is consultation, as in seeking the views of the community. But consultation does not necessarily lead to the integration of the views or wishes of a community into the decision-making process or final project design. This level of engagement is usually conducted to simply inform the community of the development project, and to determine their perceptions of the project.



Adapted from the International Association for Public Participation (IAP2) Public Participation Spectrum, 2014.
(https://www.iap2.org.au/Tenant/C0000004/00000001/files/IAP2_Public_Participation_Spectrum.pdf)

These basic levels of community engagement, though, do not go far enough to capture the level and comprehensiveness necessary to engage the community in a way that truly respects their history, traditional knowledge, cultural norms, relationship with the land on which they live, the natural resources they utilize, and their legal and human rights.

Hence, more evolved definitions refer to community engagement as public participation or working in partnership with the community, or even as participative democracy. These definitions incorporate the aspects of collaboration, negotiation and empowerment to foster collaborative decision-making and empowered action with community consent, and perhaps even partnership as the key outcomes.

This guide considers community engagement as a full suite of communication and direct interaction activities with impacted communities that, ideally, leads to community consent for a project. This approach includes the dissemination of information, targeted consultation with local leaders and representative groups,³ collaborative decision-making, and perhaps even community co-design of the project.

A CASE FOR TRANSPARENT AND CONTINUOUS COMMUNITY ENGAGEMENT

From a review of civil suits in Kenya with complaints centered around public participation, the issue of lack of a continued engagement with the community was raised in at least one case, *Mui Coal Basin Community v. Fenxi Mining Industry Company Limited and Others*.⁴ Mui Coal Basin Community complained that there was a lack of transparency administered in awarding the tender, and that discussions on how to share the benefits from the coal mining process did not involve the community. In his ruling, the judge ordered that Fenxi should continue to engage with the local community and provide reasonable opportunities for public participation during the process of preparing the Environmental Impact Assessment (EIA) and the process of resettlement, as outlined in the Benefits Sharing Agreement between the Government of Kenya and Fenxi, including the sharing of benefits with the community.

Source: www.kenyalaw.org/caselaw/cases/view/117704/

WHAT DOES THE LAW REQUIRE?

The Constitution of Kenya provides a strong foundation for participatory governance. While the Constitution does not use the term *community engagement*, it is replete with provisions on public participation, and establishes *public participation* as a key value and principle in governance.⁵

Public participation is a deliberative process in which the public is involved in problem-solving or decision-making in policy formulation, legislation, or project implementation. It is a process by which community concerns, needs, and values are incorporated into government and corporate decision-making. Public participation is variously referred to as engaging stakeholders, citizens, or communities.

Public participation recognizes the diversity of group aspirations, needs, and values, and permits collective decision-making, thereby allowing consensus designed to achieve more legitimate policies. The essence of public participation is to strengthen and deepen democratic governance.

Public participation is now a primary requirement in all policy and statutory functions of Kenya's executive and legislature. Public participation is also an inherent requirement in the planning and execution of projects that have an impact on the social or economic life of communities, and is a specific stipulation in all projects with an impact on the environment. The objective for this requirement is to involve communities in all decisions that touch on their lives.

In addition, almost all of Kenya's statutory instruments enacted after the promulgation of the Constitution in 2010 contain provisions on public participation, with which developers are required to comply. The statutes require that public participation is initiated at all stages of policy development and project implementation. Public participation is regarded as an obligatory and collaborative process, serving to infuse citizens' values and priorities in legislation to increase transparency and accountability. In project implementation, public participation is geared at obtaining a buy-in and acceptance in the commission of any venture in communities. The table on page 15 lists applicable public participation legislation.

³These should include women, youth, and/or any other marginalized or vulnerable groups.

⁴Constitutional Petition No. 305 of 2012, Ruling dated September 18, 2015

⁵The Constitution of Kenya, Article 10(2)(a), 2010



APPLICABLE PUBLIC PARTICIPATION LEGISLATION

The Constitution of Kenya, 2010

The Employment Act, 2007

The Urban Areas and Cities Act, 2011

County Governments Act, 2012

Intergovernmental Relations Act, 2012

Land Registration Act, 2012

National Land Commission Act, 2012

Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012

Transition to Devolved Government Act, 2012

Kenya Wildlife Conservation & Management Act, 2013

Public Private Partnership Act, 2013

Environmental Management & Coordination Act, 2015

Protection of Traditional Knowledge and Traditional Cultural Expressions Act, 2015

Access to Information Act, 2016

Climate Change Act, 2016

Community Land Act, 2016

Land Laws Amendment Act, 2016

For a complete description of the relevant provisions, see Annex I – Kenyan Laws Pertaining to Public Participation on page 65.

Developers must also ensure compliance with the requirements of International Finance Institutions (IFIs) for stakeholder engagement, as a prerequisite to securing funding for investment in development projects. The IFC Performance Standards are one such requirement.

Developers must ensure that they proactively initiate and drive the public participation process for all project activities that fall within the public's interest.

Accordingly, **public participation must not be undertaken as a mere formality**, but should be given true meaning, value, and significance. The public must be encouraged and provided the opportunity to contribute their viewpoints and ideas.⁶ Meaningful public participation also includes deliberate measures to ensure participation of women and marginalized groups such as youth, people with disabilities, and indigenous groups.

Today, community engagement for large-scale infrastructure projects in Kenya involves an array of actors, as illustrated in the figure below.

ACTORS IN COMMUNITY ENGAGEMENT

Community Members

Community & Grassroots Leadership

Civil Society Partners

Developers

County Government & Other Elected Leaders

National Government Partners

⁶In some cases, community representatives may require financial support for transportation, and consideration should always be paid as to the timing of meetings in order to ensure their participation.



Photo: USAID/Neil Thomas

Targeted materials are often necessary to deliver accurate information. Here, young boda-boda (bike-taxi) drivers read an educational tabloid designed specifically for them.

RIGHTS TO ACCESS TO INFORMATION IN KENYA

The *Access to Information Act*, enacted in 2016, grants the legally enforceable right for every Kenyan citizen to access information held by public entities and private bodies.

Developers should, therefore, be prepared to disclose relevant project information upon request, except any information whose disclosure is likely to “substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained.

While the Act does not outline requirements for power project developers specifically, the Act’s definition of “private body” is deemed to apply to developers: “any private entity or non-state actor that (a) receives public resources and benefits, utilizes public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources (with regard to said funds, functions, services or resources); or (b) is in possession of information which is of significant public interest due to

its relation to the protection of human rights, the environment or public health and safety, or to exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.

The Act also delineates procedures by which citizens can access information, and procedures for public entities and private bodies to disclose information systematically, as well as provision for exempt information subject to international standards.

WHY IS COMMUNITY ENGAGEMENT IMPORTANT FOR DEVELOPING POWER PROJECTS?

Following the enactment of the *Environmental Management and Coordination Act (EMCA)* in 1999, and its Impact Assessment and Audit Regulations in 2003, project developers and the National Environment Management Authority (NEMA) started conducting stakeholder engagement meetings for projects that were deemed to have significant impacts.⁷ For projects that are deemed to require additional stakeholder engagement, a summary of the project impacts is disclosed in a nationally circulated newspaper and in the *Kenya Gazette* for two consecutive weeks, whereby the public is provided the opportunity to review the full report at a specific location. The public is then given forty-five (45) days to give feedback to NEMA. In some cases, when significant issues are raised, NEMA will call for a public hearing at a venue within the affected project area. The outcomes of this hearing are expected to inform the conditional permitting requirements for the project.

More recently, private investors in Kenya's energy sector have increased direct community engagement, outside of the Environmental and Social Impact Assessment (ESIA). **This increase is due to a requirement by the Ministry of Energy and Petroleum (MoEP) and the Energy Regulatory Commission (ERC) that developers obtain a record of "no objection" (or social contract) from the community within which the project is located prior to issuance of approval to proceed with the project.** This can also be considered as documentation of what some refer to as a "social license."⁸

Power projects in Kenya, particularly those requiring new transmission lines, typically require a substantial amount of land. The Lake Turkana Wind Project, for example, the single-largest private investment in Kenya's history to date required 40,000 acres (162 km²) for the 310 megawatt (MW) wind farm, and an additional 110,000 acres (445 km²) for the buffer zone, plus a swath of land approximately 428 km long by 80 m wide for the transmission line passing through private land, community land, and public lands.

⁷NEMA is the authority established to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya in the implementation of all policies relating to the environment.

⁸Social license denotes ongoing, broad acceptance of your development initiative by the affected community.

⁹Community Land Rights Recognition Model, Ministry of Lands, Republic of Kenya, September 2011, page 3

SHARING BEST PRACTICES ACROSS CULTURES AND CONTINENTS

As a result of an exchange program between Kenya and New Zealand facilitated by Power Africa and the U.S. Energy Association (USEA), Kenya's leading electric power generation company, the Kenya Electricity Generating Company (KenGen), now acknowledges that community engagement is actually good for the utility's bottom line. Based on New Zealand's approach, they determined that community engagement is not just a charitable practice or an exercise in corporate social responsibility. Instead, early engagement with affected communities helps utilities deliver low-cost power projects by reducing delays caused by community objections and litigation. Historically, some management and staff considered Maasai and other local populations as adversaries that stand in the way of project progress. KenGen leadership has since shifted its mindset and now approaches the affected communities as partners.

For more on this partnership, see the Power Africa blog post on *The Sacred Nature of Geothermal Energy* at www.medium.com/power-africa

Land is critical to the "economic, social, and cultural development of Kenya and was a key catalyst of the struggle for independence."⁹ Land ownership in Kenya is perhaps one of the most emotive and political issues, and land acquisition can be an extremely sensitive and challenging process.

It is not surprising, therefore, that land-related issues are the biggest source of community grievances against development projects. These grievances arise from issues of land ownership and tenure disputes, historical injustices, gender inequalities, compulsory acquisition, involuntary resettlement, foregone future development rights on the impacted land, benefit-sharing, and compensation packages, among other issues.

For these reasons, **community engagement is critical to ensure accuracy and transparency in the land acquisition component of a project, to ensure fairness in compensation and/or other benefits shared with affected communities, and to understand and manage community grievances.** Early and effective community engagement can significantly enhance the land acquisition component of a project, which is a threshold achievement for reaching financial close.

CATEGORIES OF LAND OWNERSHIP IN KENYA



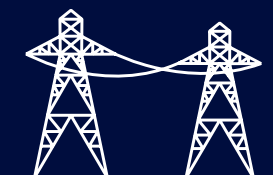
PRIVATE LAND

- Registered land held by any person under any freehold tenure
- Land held by any person under leasehold tenure



COMMUNITY LAND

- Land lawfully registered in the name of group representatives
- Land lawfully transferred to a specific community
- Land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines
- Ancestral lands and lands traditionally occupied by hunter-gatherer communities
- Land lawfully held as trust land by the county governments, but not including any public land held in trust by the county government



PUBLIC LAND

- Comprises all land that is not Private Land or Community Land
- Any other land declared to be Public Land by an Act of Parliament

It is also important to recognize the fact that women may have limited rights to land ownership due to customary law and practices, despite a constitutional guarantee of equality. Developers must be cognizant of women's rights in relation to land to ensure that their rights are upheld and protected. Assessing land users' rights should not be limited to ownership.

Further complicating the matter of land in Kenya is the category of Community Land. This tenure regime is a formal recognition of customary rights. Approximately 68% of the total land area of the country falls into this category, and a majority of the areas with the potential for energy development projects fall within this tenure regime.¹⁰ While the *Community Land Act* was enacted in 2016, as this guide went to press the regulations to implement the Act were yet to be promulgated. The absence of these regulations complicates the acquisition, utilization, and management of this category of land.

For more information about land issues in Kenya, please see the USAID Land Tenure and Property Rights Country Profile at <https://www.land-links.org/country-profile/kenya/>.

COMMON LAND-RELATED ISSUES

Resettlement Plans
& Procedures

Siting of Proposed
Project Footprints

Livelihood
Restoration Programs

Size of the Land to be
Acquired or Leased

Benefit sharing
& Compensation
Packages

Foregone Future
Development Rights

Land Ownership &
Tenure Disputes

Women's Land Rights

Compulsory
Acquisition

Involuntary
Resettlement

Competing Land
Claims

Historical
Injustices

¹⁰As per the Ministry of Energy & Petroleum Strategic Plan 2013-2017, the majority of untapped wind, solar and geothermal resources are located in the Upper Rift Valley and the Northern region of Kenya.

HOW TO APPROACH COMPETING LAND CLAIMS

Sometimes, more than one group may claim customary ownership over an area, or part of an area, or there may be disputes between groups over boundaries. These issues are most likely to arise where there has been an intermingling of groups as a result of displacement and internal migration, or people have moved away from their traditional lands to new areas.

It can be tempting for developers in these circumstances to favor whichever group is more cooperative and supportive of the proposed development, but this path is fraught with difficulties. Such a

response could result in a group that potentially has a legitimate claim to an area being excluded from discussions and negotiations, which might develop into a dispute between the developer and that group. Reacting in this way is also likely to cause or exacerbate tension between the relevant groups themselves and intensify opposition to the project from those who have been excluded.

Good practice in these cases is to adopt an inclusive approach and assume that claims from different groups are valid until shown otherwise. Also, where there are conflicts and disagreements

between groups, developers should look for opportunities to assist groups to resolve their differences (e.g. by helping to identify a mediator, or perhaps offering to fund one) rather than leaving it to “the law” to run its course.

Another situation that may arise is where a project and related infrastructure (such as roads or transmission lines) crosses over the land of different traditional owner groups, or otherwise impacts on these lands. In these cases, good practice is for developers to be consistent and transparent in their dealings with all impacted groups.

Adapted from: Tool 3: Dealing with challenges in the identification and recognition of indigenous land rights, International Council of Mining & Metals Good Practice Guide on Indigenous Peoples and Mining (Second Edition), 2015 (<https://www.icmm.com/website/publications/pdfs/9520.pdf>).



Photo: USAID/Eric Onyego

Participatory mapping of land and natural resource claims can stimulate more effective community engagement.

To help communities define, map, record, and document their land and resources, USAID established the Mobile Applications to Secure Tenure (MAST) initiative. MAST is a suite of innovative technology tools and inclusive methods that uses mobile devices and a participatory approach to efficiently, transparently, and affordably map and document land and resource rights. For more information on MAST, go to <https://land-links.org/tool-resource/mobile-applications-to-secure-tenure-mast/>.



Photo: USAID/Eric Onyiego

A community sensitization meeting in Mapawa Village.

CONDUCTING COMMUNITY ENGAGEMENT

Now that community engagement has been defined, and its importance in the development of power projects highlighted, **this section outlines the process of planning, conducting, and monitoring community engagement throughout the project life cycle.** While this is the “how-to” section of the guide, each practical step described below is bolstered by relevant cultural and legal context. The content in this section is also informed by a set of principles that will help developers conduct meaningful and productive community engagement.

At the end of this section, on pages 53-58, we provide a Master Checklist of the critical activities and considerations for each step of the community engagement process.

PRINCIPLES

Careful Planning
& Preparation

Proactive
Consultation
& Sourcing of
Feedback

Collaboration
& Shared
Purpose

Inclusive
Participation

Ensure
Cultural
Appropriateness

Integrity,
Transparency
& Honesty

Learning,
Accountability
& Trust

Gender
Equality
& Female
Empowerment

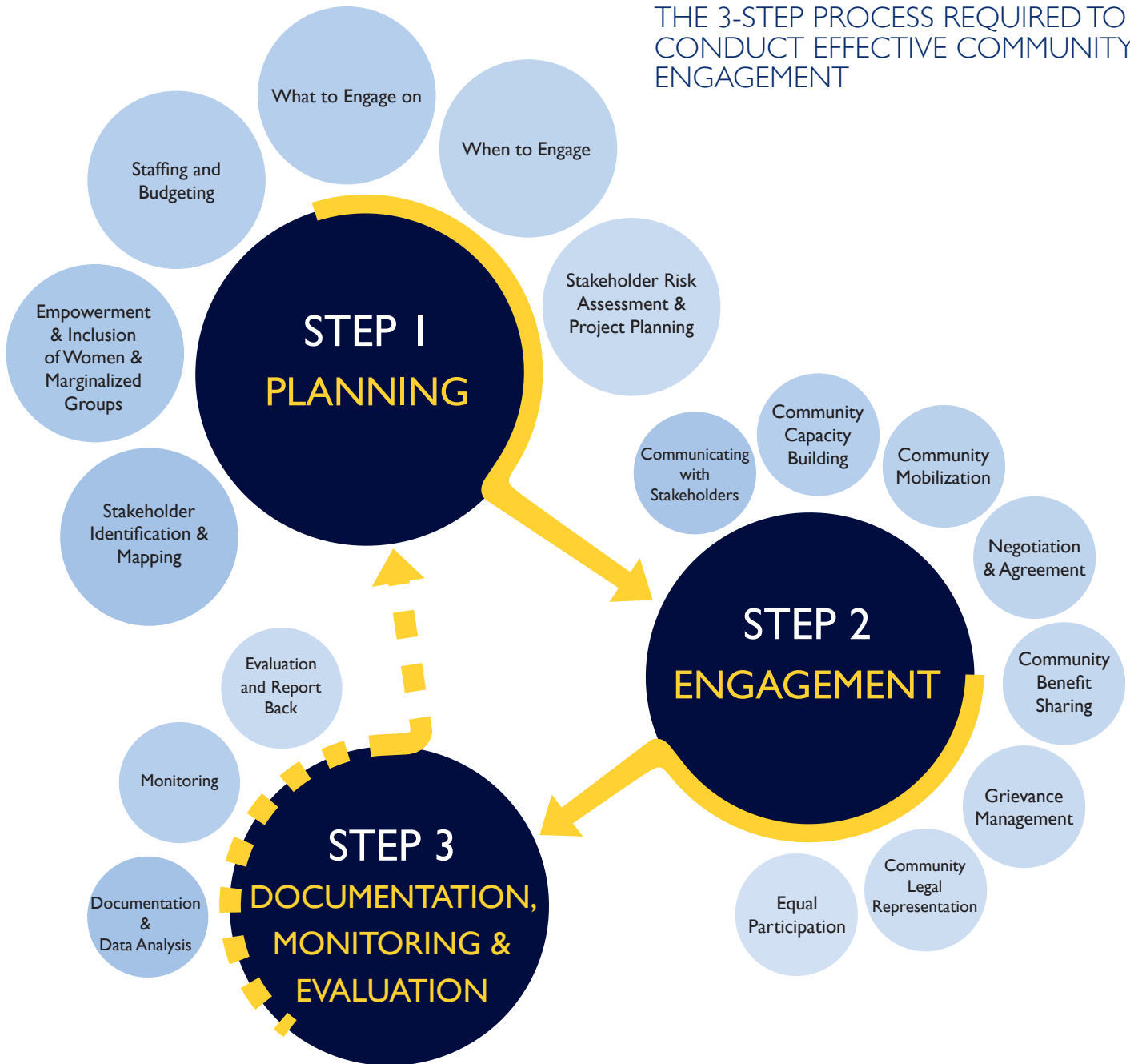
Disclosure
& Access to
Information

Manage &
Address
Grievances

Do
No Harm

Sustained
Engagement
Throughout

THE 3-STEP PROCESS REQUIRED TO CONDUCT EFFECTIVE COMMUNITY ENGAGEMENT



STEP 1: PLANNING

The first step to any robust community engagement effort is crafting a coherent, comprehensive, and adequately resourced plan. Planning community engagement activities and outcomes will help build and organize the strategies necessary for success. In this section, we highlight the following planning-related topics:

- Staffing and budgeting for community engagement
- Who to engage
- What to engage on
- When to engage

STAFFING AND BUDGETING FOR COMMUNITY ENGAGEMENT

To implement a robust community engagement strategy, developers should commit sufficient human and financial resources, just as they would budget for other operational components of the project. Having the right people to manage community engagement, equipped with an adequate budget, is as important as having the right engineers. Think of it as an investment in an insurance policy for the power project.

Project management staff, project field (technical) staff, and specific (community liaison) staff are the main people who will interact and engage with the target community. A good socio-economic baseline and the stakeholder analysis process can inform a developer on the specific expertise and personnel needed. Where the emerging challenges and issues are expected to occur only periodically, the baseline can also inform the developer on whether to engage staff with a specific skill set on an ongoing basis, or as-needed during crucial points in the project. The exact number of staff to be engaged will also be determined by the workload.

A good practice is to establish a social management system, which can be integrated with other key project management systems as determined during project feasibility stages. Considering that community engagement revolves around the social management of project impacts, specific community liaison staff can also be part of the environment health and safety (EHS) management team.

From a community engagement perspective, **it is important to have community liaison officers and a social focal point reporting to the main management team**, within the project staff organization structure. A gender specialist should be allocated to the team to ensure that gender considerations are successfully integrated into the community engagement process, and all project staff should be held responsible for gender equitable programming and implementation.

Community liaison officers should have the proper qualification in an applied social science, sociology or community development, but more importantly, they should have the interest, disposition and a positive attitude in dealing with the community and relevant stakeholders.

Budgeting for community engagement should be informed by the various management plans/systems that arise from the project feasibility stage. These may include Stakeholder Engagement Plans, Community Health and Safety Plans, Resettlement Action Plans, Environmental and Social Management Plans, Community Employment Initiatives, Grievance Management Systems, Community Capacity Building Plans, Community Development Plans, and Corporate Social Responsibility (CSR) programs. **The project staff appointed to deal with stakeholder and community engagement should prepare strategic and annual work plans in line with the project calendar year to facilitate timely allocation of budgetary and human resources.**



The Olkaria geothermal complex and power station in Naivasha was the first geothermal power plant in Africa.

Photo: © International Renewable Energy Agency

WHO TO ENGAGE

Stakeholder Identification

As a developer, it is essential to know the people who may be impacted by a project and who may have an influence on its ultimate success. Communities are not homogeneous and are comprised of people with different lived realities and different interests and concerns relating to development.

A robust process of stakeholder identification and analysis, involving an assessment of different groups and interests in the community, is essential to determine potential supporters and partners, as well as those who may oppose the project. Further, developers may wish to consider consulting women separately, as they may have unique knowledge of the land and other natural resources, as well as an understanding of their rights.¹¹

Initial stakeholder identification and analysis can be conducted through a desk study or through an interdisciplinary group discussion. After identification of key stakeholders, some outreach is advisable to confirm contact information, do initial introductions, etc. With every interaction with the community, findings of the desk study and group discussions should be validated and updates made to the stakeholder database.

STAKEHOLDER DATABASE

It is highly recommended to create a database of stakeholders with contact information of specific individuals and office holders. Leaders should include descriptions of the section or sub-section of the community that they represent. Where possible, document the spatial extent of a community leader's jurisdiction. Ensure that the database is regularly updated with any new stakeholders, individuals, contact information, etc. All stakeholders in the database should also be disaggregated by gender.

A review of the applicable policy and legal framework can identify key institutions with mandates of relevance to the project, and specifically on community engagement. The institutional roles that converge with the community engagement objectives should be described and noted for future reference.

Multiple discussions with other stakeholder groups are critical to triangulate information collected from various tools and resources. As such, discussions with the community, civil society, and government agencies should be reviewed side-by-side to get the correct picture.

Stakeholder Mapping & Analysis

Stakeholder mapping and analysis, including gender analysis, can help developers better understand the people encountered during project development. Considering that the target community is part of the comprehensive stakeholder base, this tool will also help developers visualize what influences various stakeholders have on community engagement objectives. **Stakeholder mapping and analysis will also help determine where to place community engagement efforts for a win-win outcome.** Finally, it will ensure easy identification of gaps in terms of representation of women and marginalized groups, which can then be addressed. For example, women may not be represented within community leadership bodies, particularly in cases of traditional or religious groups, where they are often excluded from leadership positions due to cultural and religious norms. It may be necessary, therefore, to take deliberate steps to ensure women leaders are identified.

Stakeholder Analysis Matrix

It is critical to create and regularly update a Stakeholder Analysis Matrix. A sample template was used to conduct a high-level stakeholder analysis of the power sector in Kenya (see Annex 2). The Stakeholder Analysis Matrix should be a live document that is updated whenever new information emerges, or when the project moves to a new stage. Changes in the policy, legal, and regulatory framework, as well as any shifts of public opinion, can also influence the assumptions made during the initial analysis.

In some cases, Project Managers endeavor to develop a Project Risk Assessment and prepare a matrix to manage and track risks. Assessment of social risks can be informed by the stakeholder risk assessment developed from the Stakeholder Analysis Matrix. The key objective is to identify specific goals of the project implementation program that require community engagement to be achieved. A key resource in this process is the developer's community engagement team, especially one that has existing knowledge of the affected community or who has had some initial interaction with the target community.

¹¹USAID, Operational Guidelines for Responsible Land Based Investment, page 34 (2015)



Photo: USAID/David Mutua

Validating community members and leadership systems is an important early step of the community engagement process.

IMPORTANT CONSIDERATION

It is essential to work with the community to correctly identify their genuine representatives. In some cases, certain individuals may inaccurately present themselves as bona fide community representatives, even though they do not actually have the mandate from the community and/or the best interests of the community at heart. Regardless, engagement with community representatives should never replace direct engagement with the community members themselves.

MAPPING LAND CLAIMS

When conducting stakeholder mapping, it is considered best practice to undertake an actual mapping process of the claims to the land that the development project will affect. This will greatly enrich stakeholder engagement and will serve to strengthen the land and resource tenure rights of the communities, which will empower them to participate more effectively. For more information, please refer to the Analytical Framework for Land-Based Investments, which outlines how mapping of land claims should be undertaken.

Source: New Alliance For Food and Nutrition, August 2015, Analytical Framework for Land-Based Investments in African Agriculture; Due Diligence and Risk Management for Land-Based Investments in Agriculture.

USE OF PUBLIC DISCLOSURE TO IDENTIFY STAKEHOLDERS

One stakeholder identification strategy under Kenyan law is the use of public disclosure to identify persons with an interest in a particular resource. Courtesy calls to the local administration of a project area can be supplemented with public announcements in fora such as chief's barazas* or religious gatherings (at a church or mosque). In areas with scattered settlement patterns, consultation can be done with key informants to determine the best public place to introduce the project interests and identify community groups and relevant social groups, ensuring that women have equal access and engagement. Examples may include venues for government and civil society-sponsored mobile health clinics, women's market groups, etc.

*Baraza is a Swahili term meaning "public meeting."



County Communication Officers are a common method of delivering important information to communities.

Photo: USAID/David Mutua

Empowerment and Inclusion of Marginalized Groups

Some groups—such as women, youth, people with disabilities, the elderly, ethnic minorities, nomadic groups, or the very poor—may face social, political, cultural and communication barriers that preclude them from participating effectively. Considerations must be made for these groups to eliminate the barriers to effective participation. Specific interventions should be designed (based on an informed analysis and additional resources set aside to facilitate effective participation by these groups. For example, in rural areas, **care must be taken to ensure that persons who cannot understand English and Swahili are provided with translation in the local vernacular.** In some cases, it may be necessary to provide sign language translators.



USAID/Marouchier Deghati

Power projects must recognize all members of a community, including orphans and vulnerable children.

HOW KENYA'S DIVERSE PEOPLE AND CULTURES CAN INFLUENCE ENGAGEMENT

According to the Kenya National Bureau of Statistics, there are more than forty ethnic groups recognized in Kenya, including the Kikuyu (22%), the Luhya (14%), the Luo (13%), the Kalenjin (12%), the Kamba (11%), and the Kisii and Meru (6% each).¹² While native African culture has been diluted in many parts of Kenya, in certain regions, the economic systems, culture, and way of living of these communities have experienced limited changes from outside influences. In rural areas, especially those in the northern region, and among the Turkana, Samburu, Maasai, Somali, and Rendille peoples, it is not unusual to encounter someone in traditional dress and elaborate beaded and metal jewelry, not just for cultural rites and ceremonies, but also in their day-to-day activities.

However, globalization and access to the internet and international media has impacted some parts of Kenyan culture. This is quite evident in urban and peri-urban areas where the cultural divide is evident between youth and their parents.

Gender disparities in Kenya are also influenced by traditional practices, beliefs, and values. Despite the promotion of women's empowerment, there are still some areas in Kenya where female household heads defer to the male next of kin to make decisions regarding property, including the land on which development projects are established.

Regarding religion, some Kenyans may practice Islam and Christianity in tandem with participation in African rituals and adherence to values, norms, and practices that may run counter to the religion to which they ascribe. There are also some communities in Kenya who ascribe to religions that were unique to the country, which arose from the initial interactions between the local traditional religions and the first Christian missionaries.

This is relevant to community engagement for power projects because during project implementation, physical resources of religious or cultural value may be affected by some form of disruption or destruction requiring relocation of the asset. In such a case, the community may raise an issue with the proposed relocation procedures based on taboos and rules based on traditional requirements. See "How Developers Can Deal with a Clash of Traditional and Modern Values" section on page 41.

¹²Rafiki Trust, 2015 Kenya Facts and Figures
(<http://www.rafikitrust.org.uk/current-project/kenya-facts-a-figures.html>)

Empowering Women and Integrating Gender

Gender equality is a fundamental principle that should guide community engagement. It is often assumed that when the community is invited for consultation that both men and women will participate, but this may not always be the case. Despite being enshrined in Kenyan law and policy, gender equality still faces challenges arising from prevailing cultural norms in patriarchal communities.

Therefore, **it is imperative to integrate gender considerations into the community engagement process.** This will not only ensure that project development does not exacerbate existing gender inequalities in a community, but that gender equality and women's empowerment are advanced through project development.

Traditional gender roles for men and women are different and may sometimes facilitate or impede effective participation by women in some community engagement activities. In many Kenyan communities, women's roles include childcare, fetching water and fuel, food production and processing, and more. Community meetings scheduled on certain days of the week, periods in the calendar year, hours of the day, as well as venues, seating arrangements, cultural requirements in public places and mode of presentation of issues can limit women's participation. Hence, community engagement activities must be organized accordingly.

Good case practice recommends that a female member of the community engagement team should meet with women representatives in a community with no males present to encourage women to speak freely about matters that affect them. Conducting separate meetings for women, however, does not mean that they should be excluded from participating in broader community meetings with men. In other words, **women should be afforded the opportunity to speak in women-only groups**, if necessary in the face of restrictive cultural and social norms, and they should also participate in community meetings where men are present. The developer will need to foster a strategy to ensure women's meaningful engagement within the specific cultural context.

BEWARE OF UNINTENDED CONSEQUENCES

Along with the positive intended benefits of development, large-scale infrastructure projects may have unintended negative consequences. For example, increased vulnerability of girls and women in the community to gender-based sexual violence and prostitution is a reality, as rapid urbanization and the influx of a large number of male workers from outside the community occurs. Vulnerability to, and the spread of, Human Immunodeficiency Virus (HIV) infection is also a risk under such circumstances.

Unintended negative consequences, such as gender-based violence (GBV), can only be mitigated through an early awareness of the risks. These are most likely to be raised during separate consultations with potentially affected populations when conducting community engagement.

During these consultations, specific safety concerns can be explored, in particular with respect to GBV. It is then possible to integrate appropriate prevention and response mechanisms into the project design, in further consultation with the community. For example, workplace policies prohibiting sexual harassment should be drafted if they do not already exist, and a mechanism for reporting and responding to incidents of GBV during construction should be designed and instituted.

The risk of unintended consequences from development projects related to women's safety and security also underscores the importance of including a gender specialist on the community engagement team. Doing so will increase the likelihood of recognizing the risks before the project is underway, and implementing successful mitigation measures to avoid incidences of GBV.

For more information on GBV in infrastructure projects, refer to the USAID publication: *Building a Safer World: Toolkit for Integrating GBV Prevention and Response into USAID Energy and Infrastructure Projects*, August 2015 (<https://www.usaid.gov/documents/1865/building-safer-world-toolkit-integrating-gbv-prevention-and-response>).

Community engagement is expected to be culturally sensitive, which may result in the exclusion of women due to prescribed norms in some cultures. There is a need, therefore, to balance cultural sensitivity with respect for the principle of gender equality. In instances where women are excluded from participating in community engagement activities, or where their opinions are not given equal consideration due to cultural norms and practices, **the developer will need to foster a strategy to ensure women's meaningful engagement within the specific cultural context.**

EACH PROJECT IMPACTS WOMEN AND MEN DIFFERENTLY

Large energy infrastructure projects impact men and women differently, namely with respect to land and resettlement, workforce participation, and the opportunities that are created for skills development and procurement. Women's expectations of a development project may differ from those of men. For example, a developer may establish a community development initiative as a strategy of benefit sharing with the affected community. In such cases, the perspectives of men and women about the initiatives to be funded by the project will be different. Women may want initiatives that lighten their work burdens, like bringing water and health facilities nearer to where they live, while men may have considerations related to the roles they perform in the community. Also, different communities have varied ways of access and control of land as a resource. Perceptions, expectations, and decisions about land and land-based resources are likely to differ across gender lines. It is important, therefore, that the perspectives of men and women are sought and included in project planning and throughout project development.

Including Minority and Other Special Subsets of the Community

To obtain inclusive and adequate feedback from all stakeholders, it is important to engage any and all special groups within the community, such as vulnerable and minority groups. This is well covered in Kenya's legal framework that touches on public participation, as it encourages the promotion of effective participation of marginalized and minority groups in decision-making processes.¹³

Kenya's laws also call for inclusivity and recognition of their special needs, and most go further by requiring facilitation of removal of these barriers to participation and involvement. This includes, at times, the facilitation of representatives of the public to attend meetings.¹⁴

Identifying Indigenous Peoples and Understanding Their Related Rights

It is important for private developers to know whether a group is indigenous and to understand their rights before engaging with them as project stakeholders. **For communities identified as indigenous peoples, the principles of Free Prior Informed Consent (FPIC) should be upheld at all times in accordance with international standards.**

The Constitution of Kenya recognizes indigenous peoples in its definition of marginalized communities in Article 260.¹⁵ While Kenya has not endorsed the United Nations Declaration of the Rights of Indigenous Peoples, 2007 (UNDRIP), nor ratified the International Labor Organization (ILO) Convention No. 169, 1989, it is party to the African Charter on Human and Peoples Rights, 1986 (the Charter), and subject to the jurisdiction of the African Court on Human and Peoples Rights (the Court).

The Court, the United Nations (UN), and many IFIs agree that there is no fixed definition of indigenous peoples, but rather suggest a set of criteria for making the determination. The Court provided the following criteria for identifying indigenous peoples, based on the UNDRIP and the criteria previously given by the African Commission on Human and Peoples Rights (the Commission):

¹³The Constitution of Kenya, Article 21 (3), 56 (a), 91 (e)

¹⁴In some cases, community representatives may require financial support for transportation, and convenient timing to participate in meetings.

¹⁵The Constitution of Kenya, Article 260

“the presence of priority in time with respect to the occupation and use of a specific territory; a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions; self-identification as well as recognition by other groups, or by State authorities that they are a distinct collectivity; and an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist.”¹⁶

The World Bank¹⁷ and IFC¹⁸ have well-developed safeguards for engagement with indigenous peoples that provide such criteria. Both suggest that it may be necessary to seek assistance from social scientists to determine whether a group is indigenous.

Developers should, therefore, invest in the process of identification of indigenous peoples at the very first stages of stakeholder identification and mapping. From the initial screening, if a community fits the criteria of indigenous peoples, the developer should invest further in expert studies to confirm whether the community is considered indigenous or not. Through baseline socio-economic survey and community mapping, developers can identify the ethnic communities within the project area and flag those that are likely to fit the criteria set by the Court.

KENYA'S RECOGNIZED INDIGENOUS PEOPLES

The African Commission on Human and Peoples Rights had previously identified the following communities in Kenya as Indigenous Persons:

- Hunter-gatherer Communities: Aweer (Boni), Ogiek, Sengwer, Watta, and Yaaku;
- Pastoral-nomadic Communities: Maasai, Samburu, Elmolo, Turkana, Rendille, Borana, Somali, Gabra, Pokot, and Endorois.

In consideration of the decision by the African Court of Human and Peoples Rights (May 2017) defining indigenous peoples, however, this list is subject to change. (see The Case of the Ogiek on page 30).

To support the process of identifying indigenous peoples, therefore, developers should recruit professionals such as anthropologists or sociologists that have a proven track record working on projects financed by the IFC or other applicable development finance institutions, and are respected by indigenous peoples, particularly the communities in question.

An initial investment in such professionals will be beneficial in the long run to help avoid future litigation costs or project delays arising from programs enacted by funding agencies to make good on prior omissions or violation of indigenous peoples rights.



Photo: USAID/Ranelle Skyles

Community engagement efforts must ensure participation of women and marginalized groups, such as Indigenous Peoples and other historically underserved traditional local communities.

¹⁶African Commission on Human and Peoples' Rights (the "Commission") v. Republic of Kenya, 2012

¹⁷The World Bank Environmental and Social Framework, Environmental and Social Standard 7: Indigenous People March 2017/Sub-Saharan African Historically Underserved Traditional Local Communities Page 106

(<http://documents.worldbank.org/curated/en/383011492423734099/pdf/114278-REVISED-Environmental-and-Social-Framework-VWeb.pdf#page=89&zoom=80>)

¹⁸See the IFC Performance Standard 7, 2012 (http://www.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012%20pdf?MOD=AJPERES)

THE CASE OF THE OGIEK

In May 2017, the African Court on Human and Peoples Rights issued a significant ruling regarding the eviction of the Ogiek Peoples by the Government of Kenya. This is the first case that the Court has heard regarding indigenous peoples, and it provides important guidance for understanding the rights of indigenous peoples in Kenya pursuant to the Charter, previous statements by the African Commission on Human and Peoples Rights (ACHPR), and the UNDRIP.

From its definition of indigenous persons, the Court found that the Ogiek peoples were indigenous and therefore entitled to special protections deriving from their vulnerability, despite the fact that the Government of Kenya had not previously recognized the Ogiek Peoples as a tribe or indigenous people. Although the initial evictions of the Ogiek Peoples took place prior to the establishment of the Charter in 1992, the Court also found that it had jurisdiction to consider the harm that resulted from earlier evictions, because evictions were continuing through the present day.

As noted in the Court's ruling in the Ogiek case, indigenous peoples have distinct rights that are inextricably linked to their traditional territories and resources.

The Court then ordered the Government of Kenya to address all the rights violations identified in their ruling. At the time of this guide's publication, it was uncertain how Kenya's legal framework may be adjusted in response to the ruling. It is important, therefore, to remain up to date on any related domestic legal reforms. It is also important to keep in mind the following elements of the Court's legal analysis when engaging with indigenous peoples as stakeholders:

1. Right to Property (Article 14 of the Charter): The Court found that public need may justify eviction, however, the eviction must be "necessary and proportional" with the public need. Importantly, the Court relied on the UNDRIP as well as the Charter to understand this right as it pertains to indigenous peoples.

2. Right to Free Practice of Religion (Article 8 of the Charter): The Court found that for traditional societies the practice of religion is usually inextricably linked with land and the environment, therefore the eviction of the Ogiek—or any impediment to or interference with their accessing their traditional lands—violated their rights under Article 8 of the Charter.

3. Right to Practice Culture (Article 17 of the Charter): Although the Government of Kenya held that the Ogiek had abandoned their traditional culture, the Court found that culture is not static,

and therefore the extent to which the Ogiek cultural practices changed did not undermine their identification as indigenous or their right to practice their culture. The Court ruled that their eviction violated this right.

4. Right to Dispose of Resources (Article 21 of the Charter): It is important to note that in its presentation of the case to the Court, the ACHPR stated that the purpose of Article 21 is to "facilitate development, economic independence and self-determination of the post-colonial States as well as the peoples that comprise those states, protecting them against multinationals as well as against the State itself." The Court did not specifically endorse or refute this reading of Article 21. It ruled that because the Ogiek were denied access to their territory, they were denied the right to freely dispose of the food resources to be found there.

5. Right to Development (Article 22 of the Charter): This is another instance in which the Court relied on the UNDRIP to understand how rights set forth in the Charter apply to indigenous peoples. The Court held that indigenous peoples have the right to determine and be actively involved in their own development. It found that because the Government of Kenya failed to effectively consult with the Ogiek people before evicting them, they had violated their right to development.

WHAT TO ENGAGE THE COMMUNITY ON

Communities must be engaged prior to making decisions on all project elements that will affect them. For a power development project, this includes decisions on technical aspects such as siting, layouts and alignments, technologies to be used, etc. These project interventions can result in direct socio-economic and environmental impacts including: land take, air pollution, noise pollution, etc., that could translate to resettlement, public health impacts and community health and safety risks.

The Environmental (Impact Assessment and Audit) (Amendment), Regulations 2016, requires that a developer conducting an ESIA study must “in consultation with the authorities, seek the views of persons who may be affected by a project.”



Pages 32-33 provide an overview table outlining a) engagement activities and processes, b) tools and techniques, and c) outputs (often referred to as engagement instruments by many IFIs) for each of the four stages of power project development.

INTEGRATING COMMUNITY ENGAGEMENT WITH THE PROJECT CYCLE

Project Stage	STAGE 1 - Early Stage Determine project viability and base case option to support commitment of funding for feasibility study	STAGE 2 - Project Development Refine base case to support commitment of resources to develop the project and invest capital; Undertake long lead time activities and obtain authorizations
Key Issues to be Addressed	<ul style="list-style-type: none"> • Preliminary project acceptance by community • Community leadership and representation • Community's capacity to participate adequately in the project • Pre-project social structure and baseline environment • Informed planning for downstream community engagement 	<ul style="list-style-type: none"> • Project impacts on the community, and vice versa • Integration of community/stakeholder views of proposed project components into project documentation • Project acceptance by the Community (Record of 'No Objection')
Engagement Activities and Processes	<ul style="list-style-type: none"> • Establishment of internal community engagement team • Capacity building staff and communities • Courtesy calls to community representatives and leaders • Documentation of pre-project environment (bio-physical, socio-cultural and economic) • Community mobilization • Participatory mapping (of claims to land and resources in project area) 	<ul style="list-style-type: none"> • Capacity building • Information dissemination • Development of grievance management system • Negotiation and agreement
Tools and Techniques	<ul style="list-style-type: none"> • Public barazas • Key informant interviews • Roundtable meetings • Focus group discussions • Stakeholder identification and mapping • Analytical framework for responsible land-based investment • USAID's Operational Guidelines for Responsible Land-Based Investments https://usaidlandtenure.net/tool-resource/operational-guidelines-for-responsible-land-based-investment/ • Mobile Applications to Secure Tenure (MAST) (p. 19) 	<ul style="list-style-type: none"> • Public barazas • Key informant interviews • Roundtable meetings • Focus group discussions • Stakeholder workshops • Stakeholder identification and mapping • Grievance management mechanism
Outputs (Engagement Instruments)	<ul style="list-style-type: none"> • Preliminary Stakeholder Engagement Plan (with a community engagement component) • Initial Environmental and Social Screening Report 	<ul style="list-style-type: none"> • Stakeholder Engagement Plan* • Environmental Scoping Report • Environmental and Social Impact Assessment • Resettlement Planning Framework • Indigenous Peoples Policy Framework • Draft Indigenous Peoples Development Plan • Community Agreements (e.g. MOUs, Draft Community Development Plan)

STAGE 3 - Arranging Finance/Financial Close

Structure project to attract finance; Arrange finance on terms and conditions sufficient to execute all project agreements; Reach financial close

- Management of expectations
- Dissemination of accurate project information

- Information dissemination

- Public barazas
- Stakeholder workshops
- Grievance management mechanism

- Stakeholder Engagement Plan*

STAGE 4 - Project Construction & Completion

Commence construction and reach commercial operations date (COD)

- Active and meaningful community engagement
- Feedback mechanisms
- Measuring performance and impact of environmental and social safeguards, including specific engagement activities

- Participatory monitoring and evaluation
- Information dissemination
- Grievance management

- Public barazas
- Key informant interviews
- Roundtable meetings
- Focus group discussions
- Stakeholder workshops
- Stakeholder identification and mapping
- Grievance management mechanism

- Stakeholder Engagement Plan*
- Community Agreements (e.g. Benefit Sharing Agreements, Community Development Plan)

*The Stakeholder Engagement Plan must and will evolve throughout each stage of the project development cycle, based on new information gained throughout the process, hence its inclusion as an output in each project stage.

WHEN TO ENGAGE

Community engagement should commence as early as possible in the project cycle. Early engagement will result in building a strong relationship from the start, and can help develop support for the project.¹⁹ Early engagement also allows for basic information on the project and the developer's intentions to be delivered to target communities and helps developers understand local land ownership and tenure arrangements. Engaging the public after action plans have been developed can backfire when the community questions the plan's vision and objectives, resulting in additional time and resources needed to repeat these activities.

There should be early community sensitization on basics like what a benefit sharing agreement is, how it is defined in law, the level of contribution to decisions that the community and/or their representatives will have, a schedule of how they will be engaged, what their rights are, etc.

THE PERILS OF NOT ENGAGING THE COMMUNITY EARLY ON

In a hypothetical case of constructing a transmission line, the most economically feasible alignment may pass through a shrine that is important to a nearby community. To an outsider, the shrine boundaries may not be distinct from the surrounding natural environment. If the shrine is a considerable distance from the settlement, it may be possible to conduct site surveys for identification of the transmission line alignment without ever interacting with the community. However, during public participation at the detailed ESIA stage, the community may raise the issue and demand that the alignment of the transmission line be changed so as not to interact with the shrine at all. By this time, it is late in the process. If these concerns were known earlier, the alignment routing could have developed differently.

Because of the late engagement, additional costs to realign the transmission line will be incurred, and the community will have a negative perception of the project. If the community felt that developers entered the shrine area without following the correct protocols or conducting the necessary rituals, it may take significant time to regain the community's trust for future project needs.



A community consultation in Kiwanja Village. Early engagement is essential to understand a community's diverse concerns.

Photo: USAID/Nichole Sobecchi

Timing can also be used as a tool to manage the community engagement process. In cases where discussions become too heated, or when progress stalls, a break (of hours, days, or other appropriate periods) can help bring perspective and clear the air. Experienced negotiators and mediators, or employees with a natural gift in managing the negotiation process, can be very helpful in these cases. Other timing-related aspects to consider include the community calendar (special events/rituals, planting season, harvests, etc.) or the national event calendar (public holidays, elections, Ramadan, etc.). At such times, community engagement may take longer than usual, or it may be encumbered by complications that necessitate an extension of deadlines or postponement altogether.

¹⁹Ahmed, Kulsum. 2012. A sourcebook of pollution management policy tools for growth and competitiveness. Washington, DC: World Bank

STEP 2: ENGAGEMENT

In the previous section, we outlined the planning activities required to prepare for community engagement. Once a comprehensive plan is established, stakeholders are identified and mapped, and topics for engagement are set, it is now time to begin engagement in earnest. In this section, we cover the following topics:

- Tools and approaches to community engagement
- Communicating with stakeholders
- Community capacity building
- Community mobilization
- Negotiation and agreement
- Community benefit sharing
- Dispute and grievance management
- Community legal representation

TOOLS AND APPROACHES TO COMMUNITY ENGAGEMENT

TOOLS/APPROACHES	DESCRIPTION	PURPOSE
Participatory Assessment	Participatory Assessment allows for an understanding of the core issues affecting a community that have a bearing on project design and operation. For community participatory assessment, the most manageable technique is participatory rural appraisal (PRA). A good practice is to triangulate the findings from participatory transect walks, household surveys, focus group discussions and small group meetings on land and resource claims and other thematic issues of relevance to the assessment.	<ul style="list-style-type: none">• Needs Assessments;• Impact Assessments (predictive);• Evaluation of Impacts;• Gender analysis;• Community health risk assessments;• Identification of potential disputes and conflicts;• Siting of infrastructure in land owned, used and accessed by the community in a bid to avoid, minimize or mitigate harm.
Community Resource Mapping	Community Resource Mapping is a critical tool for identification and documentation of customary rights over land and land based resources, and more importantly, how they would interact with the objectives of a developer. Community Resource Mapping can also help a developer understand how people live, why they live the way they do, and how they deal with socio-economic challenges including feasible coping mechanisms that they have set up among themselves.	Identification of potential conflict areas with the project hence informing not just the community engagement issues, but also: <ul style="list-style-type: none">• Project design and infrastructure;• Potential community benefit sharing initiatives;• Potential CSR activities.
Communication Plan	A Communication Plan is a schedule of activities, methods, and channels for disclosure of information to the community.	Allows for pre-determined information disclosure through interdisciplinary development of messages. It also promotes transparency, trust building, aversion of civil discord, and demonstration of good faith.

COMMUNICATING WITH STAKEHOLDERS

Information should be availed in an appropriate format, comprehensible language, and accessible location for each community. Inclusion of vulnerable persons, cultural appropriateness measures, and gender equality considerations require a case-by-case assessment to determine the practical elements that should be integrated into every public participation process, as well as the materials to be shared with the community. **Approaching community members in a culturally acceptable manner is more likely to ease relations and build trust with the community for positive engagement.**

The development of an engagement strategy is critical to guide a developer when communicating with the community. In developing an engagement strategy, the developer must know their target audience and be able to make informed assumptions about their interests, values, norms, and expectations. Assistance from an expert in community engagement is factored here to assist in determining the plausible activities that would have maximum impact across an array of engagement objectives. The level of community engagement at this point will include disclosure of some (high-level) project information, and preferably documentation of the baseline environmental and socio-economic parameters relevant to potential project impacts. **An engagement strategy is best developed with the assistance of an expert in communication for development.**

MANAGING EXPECTATIONS

It is very tempting to give promises to communities in the early stages of a project to start off on a good foot. From the beginning, the community will communicate their expectations, ranging from employment opportunities, economic opportunities, and scholarships for bright and/or vulnerable children. The target community may also expect developers to take responsibility over construction of public infrastructure and social amenities, which are the responsibility of the national and county governments. These expectations must be managed within the financial realities of the project.

USEFUL TIP

Kenya Electricity Transmission Company (KETRACO) communications experts develop leaflets with project information as developed by a multidisciplinary Project Implementation Team for new power transmission lines. This information is then disseminated in project areas during community sensitization meetings organized at the commencement of the construction phase of their projects. Attendees are therefore able to take home accurate and authoritative information concerning an upcoming project in their area.

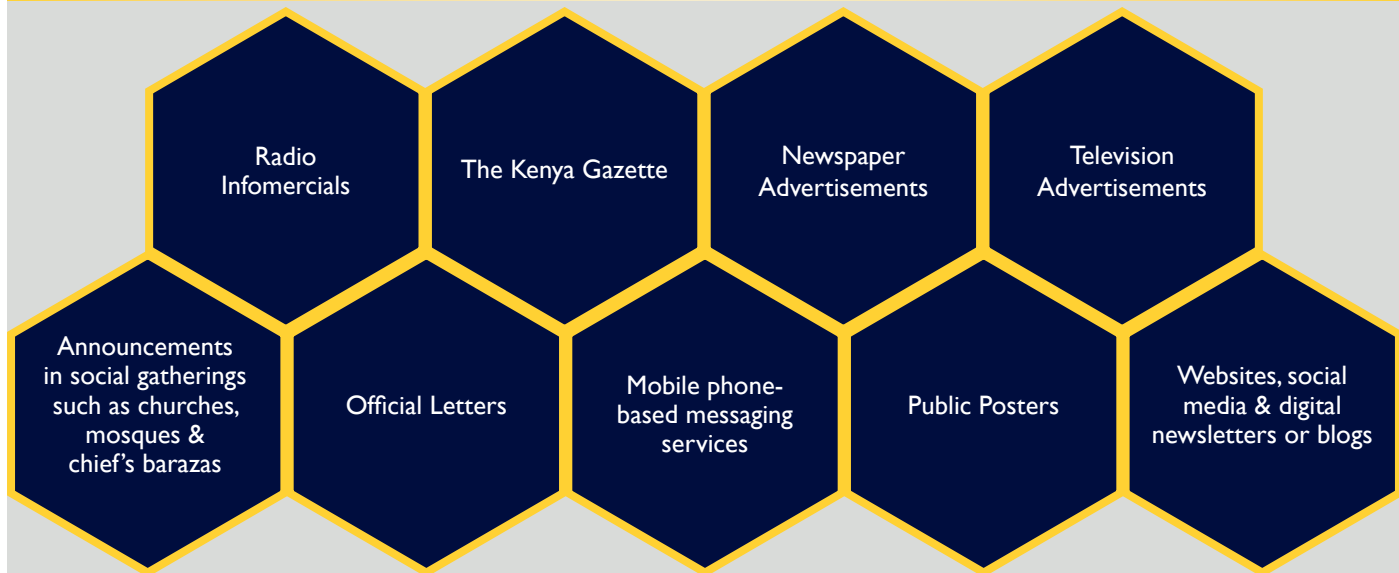


CAUTION

The time between power project conceptualization and commencement of power production can be considerable, sometimes upwards of five years or more. It is therefore advisable to be transparent with the community that power project development takes time. This information will help manage any expectations community members may have regarding immediate benefits from the project.

Any time lag between concept and close may come with changes in community leadership, especially elected leaders. These changes in leadership must be anticipated, and agreements signed with communities should cover the possibility of continuance in the event of change in leadership, to avoid a scenario where new leaders may be inclined to re-negotiate agreements already made between the community and the developer.

MEDIA AND METHODS FOR INFORMATION DISSEMINATION



COMMUNITY CAPACITY BUILDING

Some communities in Kenya have never been exposed to power projects or other large-scale developments. It is possible that they may not understand the concept or the details of the project. Thus, they may be unable to interpret the physical, social and economic impacts that the project may trigger in the area, until the time they experience them. By then, a developer has already invested in physical infrastructure in the project area.

To promote community feedback on engagement activities, a developer should consider investment in community capacity building. The principle behind community capacity building is to ensure that the community has an increased understanding of the issues on which they are being consulted in order to make an informed contribution to the decision-making process.

Community capacity building can be defined as “activities, resources, and support that strengthen the skills, abilities and confidence of people and community groups to take effective action and leading roles in the development of communities.”²⁰ Community capacity building should not be confused with community development, though the latter is an expected outcome of capacity building and other activities, including community resource mobilization and community engagement.

The level of capacity building or the need for capacity building should be informed by up-to-date, sex-disaggregated baseline information. A proper gender-sensitive baseline survey can provide a socio-economic profile of the community and the key development issues faced by different groups in the target community. Using this information, a developer can get direction on the focus areas for capacity building at various stages of the project cycle.

The baseline is also expected to inform a developer of the specific expertise that would be preferred in a community liaison officer to be hired by the project. Where the emerging challenges and issues are expected to occur only periodically, the baseline can also inform the developer on whether to contract a specific skill set on an “as needed” basis at specific, crucial points in the project.

²⁰Scottish Government (2007) Building Capacity: Resources for Community Learning and Development Practice.

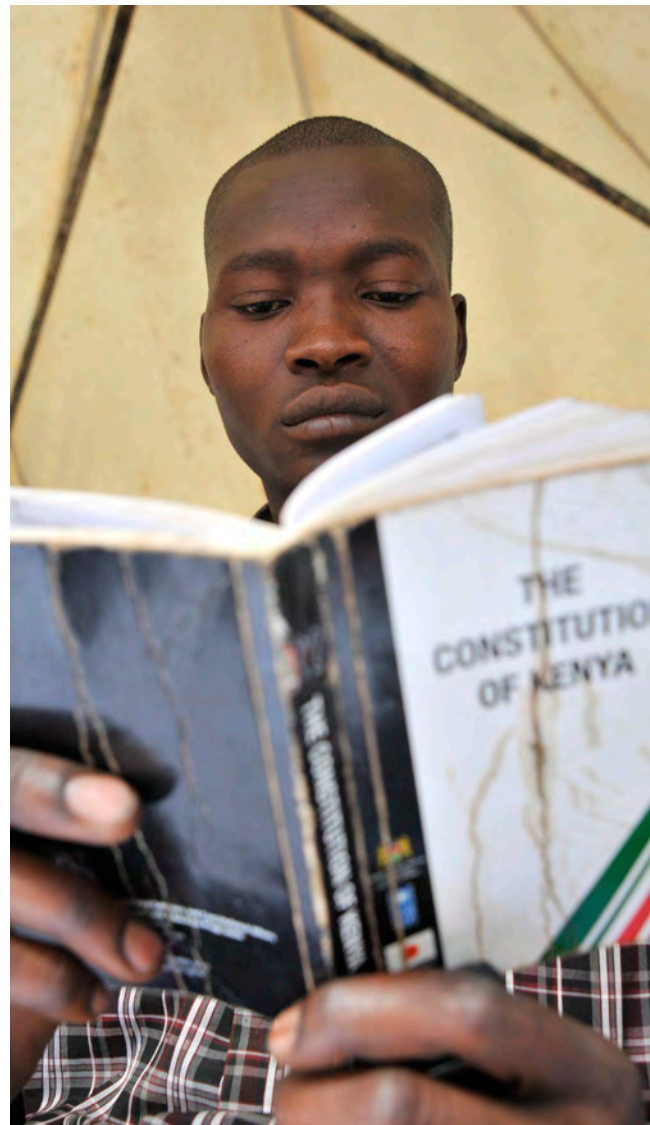
A capacity-building plan can be developed using in-house staff with an understanding of community engagement, social development, gender-related issues, and/or public engagement. Key skill sets include communication expertise and social assessment capabilities. Skills related to the particular needs of the capacity-building plan should be included in the plan itself, particularly in the allocation of resources for its implementation. The community should be sensitized to understand that while the developer may be contributing to the capacity-building plan, the plan should, as far as is possible, rely on existing community and government programs and resources allocated for the same. The developer should train the recruited personnel about the project to ensure effective and efficient communication. This will curb the impact of miscommunication and handle community expectation of the project.

DO NOT ASSUME THAT THE COMMUNITY UNDERSTANDS YOUR PROJECT

A Kenyan community consulted in the development of this guide was very well versed with the actual implications of a proposed renewable energy development project, whereby numerous representatives could confidently explain the technical details of the project that was proposed for construction on their land. With this understanding, they could define the terms they wanted to negotiate with the developer, to reduce the footprint of the infrastructure on their land. However, they reported that this knowledge was only garnered after additional engagement with the developer following public outcry, led by the community youth, against the project.

In another case, a community was very clear that they were not able to properly define the project, and their fears were further fed by the lack of information concerning the project, its developers, and their intentions. This lack of understanding and information hindered their ability to determine the potential impact on the natural and cultural resources that were integral to their way of life. They requested capacity building from civil society in preparation for a planned public hearing on the project.

Capacity-building interventions should give special priority to female and child heads of household, as they are likely to be even more vulnerable.²¹ Women's capacity to interact with traditional leaders and with project representatives can be a targeted capacity-building intervention.²² Partners in such endeavors include community-based organizations (CBOs) in the project area, and community healthcare workers within the sub-county.



After voting for a progressive new Constitution, youth are learning how to ensure needed reforms are realized.

Photo: USAID/Ricardo Gangile

²¹The Children Act No. 8 of 2001 defines a child in Kenya as "any human being below the age of 18 years."

²²USAID (2015) Operational Guidelines for Responsible Land-Based Investment. Page 24.

COMMUNITY MOBILIZATION

Developers may encounter a community that has limited exposure to structured community engagement for decision making about development projects. Such a community may never have had the need to select representatives to participate in roundtable discussions on decisions that affect them. In some cases, they may have leaders who, while duly elected by the community, were never publicly given a mandate to make decisions on development projects in general, let alone on specific projects. In such cases, there is need to **facilitate community mobilization for selection/election of leaders** to represent them on project-related decisions that will affect them.

In a country as diverse as Kenya, community leadership structures can take many forms (see examples on pages 83-84 in Annex 2: Key Stakeholder Groups in Kenya's Power Sector). Therefore, **it is imperative for developers to validate the leaders that will represent the community**. It is not unusual for communities to prefer different representation for issues such as grievance management, negotiation, and development of agreements, mediation, community mapping, decision making on benefit sharing, etc. However, some level of guidance must be given so that the developer is not dealing with too many factions of community leadership, while still ensuring that diverse voices are heard. This is especially important to ensure that women, youth, people with disabilities, indigenous peoples, and others have a voice.

Partners in this process include the respective county government, the Office of the Deputy County Commissioner, the National Land Commission, the Kenya National Commission on Human Rights, the Ministry of Energy and Petroleum, CBOs from the project area, or a steering committee made up of representatives from these agencies and organizations. Care should also be taken to ensure that the community provides representation for minority and vulnerable groups.

Prior to engagement of community leaders, documented evidence of public community endorsement/disclosure of the identified leaders, including their roles, responsibilities, and mandates, should be obtained. In some cases, communities may have to conduct elections. Communities should be consulted to determine whether these elections will be facilitated by national or county government representatives.

The support of community leaders should never be translated to replace validation of support from the community individuals themselves.

The community can be guided through the community mapping process to identify resources that would facilitate the engagement process. It is also important to identify government and cultural institutions, including women's networks, which are a valued resource to community engagement. Where needed, capacity enhancement should be done for such institutions through a participatory needs assessment. These sessions can be scheduled into the community mapping program so that the community does not encounter fatigue or feel rushed to finalize the process.

COMMUNITY SENSITIZATION & ELECTION OF COMMUNITY LEADERSHIP

Prior to the selection, election, or nomination of leaders to represent the community in relation to the project, the community should be sensitized to have meaningful discussions on the following key focus areas:

- Existing elected leadership positions and related roles as mandated by the Constitution of Kenya or any relevant statute;
- Modes for selection of additional community leaders;
- Community expectations on the leadership and representation;
- Rights and responsibilities of this leadership;
- Mandates to be given to these leaders;
- Continuity and succession systems in the leadership system. This is to avoid ad-hoc changes in leadership during engagement with the developer; and
- Equal representation of women in newly elected leadership positions.

NEGOTIATION AND AGREEMENT

Negotiations are important as they facilitate mutually acceptable outcomes, such as benefit sharing programs, resettlement and compensation packages, and community development plans. Negotiations should take place with legitimate community representatives that ensure women's representation, and should be based on timely access to all information that will enable the community to negotiate from an informed position.

THINGS TO KEEP IN MIND WHEN NEGOTIATING WITH THE COMMUNITY

Public signing of agreements is encouraged to legitimize the process.

Provision of community legal representation.

Development and agreement of a schedule for negotiation, arbitration, mediation and grievance resolution through the process.

The developer and the community should be sensitized to manage expectations. For example, the developer is unlikely to have the ability to resolve all the problems the community is facing. On the other hand, the community may not see things the same way as other stakeholders (even key informants) may expect.

Continuous and structured capacity building to ensure that the community and the developer grow together in understanding legally binding issues within their relations.

Continuous feedback to the entire community through scheduled internal community meetings, in the presence of the independent observers to ensure that there is clear understanding and no outside influence.

Community mobilization, selection and validation of gender-balanced leadership and establishment of a framework for replacement and continuity in the leadership structure. Agreements made with earlier legitimate leaders should (unless otherwise be determined null under a grievance management process) be maintained in future engagement with the community.

Negotiation and development of agreements with community leadership.

Provision of adequate time to the community to come to decisions. Communities should not be rushed in this process. To manage time schedules, negotiations and agreements should therefore be integrated as early as possible into the project cycle.

Identification/appointment of human rights observers to assist with adherence to human rights laws and regulations.

Validation of draft agreements through disclosure, discussion and documentation of consensus.

HOW DEVELOPERS CAN DEAL WITH A CLASH OF TRADITIONAL AND MODERN VALUES

Consider the hypothetical project situation that requires the relocation of graves. The community may insist that a developer pay for traditional rituals to relocate the graves, even though the deceased were originally interred through a Christian ceremony.

An understanding of this dynamic shows that despite the knowledge of Christian traditions, there remains a need for additional discussions with the affected community to determine the impact of the relocation from both Christian and local traditional viewpoints to inform agreements on the activities to be conducted and norms to be adhered to in the process of relocating the graves.

For certain communities, such as the Luo, tradition dictates that a person be buried within the homestead. The location of the grave of an unmarried woman was contentious and, in some cases, they would be buried on a sibling's property away from the family home, or outside the homestead compound due to their marital status. Relocation of such a grave could, therefore, raise emotional issues.

In such cases, developers are wise to be sensitive to any discussions regarding “compensation money” or other payments, without regard to the psychosocial and cultural impact on the affected persons. An understanding of the tone, language, and wording to be used in such cases is always an added advantage to the negotiation process.

CASE STUDY: KIPETO WIND PROJECT

Kipeto Wind Limited understood the need for meaningful community engagement for their proposed 100 MW wind farm project in Kajiado County, Kenya. From the beginning, they understood that community mobilization and identification of grassroots leadership systems would be a critical component of the project team's work.

The Kipeto team also acknowledged early on that there would be some negotiation processes incorporated into their mitigation plan regarding expected project benefits for both the developer and the community.

One of the key outcomes of their proactive community engagement has been a negotiated system for community benefit sharing, including the establishment of a community development trust fund from generation profits once the project is operational.



The Lake Turkana Wind Project comprises 365 turbines and will provide 310 MW of energy to Kenya's national grid.

Photo: © Lake Turkana Wind Project (www.ltwp.co.ke)

COMMUNITIES DO NOT LIVE IN A VACUUM,
DO NOT TREAT THEM AS IF THEY DO

Communities do not exist in isolation. There are institutions within society that influence the community's voice, their negotiation power, mood, and priorities. In all these cases, community mobilization is required to facilitate the social institution's mandate to represent the will of the community. The influence of these institutions over community decisions tends to vary from area to area, or from time to time.

For example, the recognized leadership in a community determines the way issues are articulated or brought forward for consideration. Some leadership systems may approach issues from a combative stance, while others may approach developers from a point of dialogue and negotiation. In the Kenyan context, it is also important to recognize the role that civil society has played in advocating for human rights. Despite the promulgation of the Constitution in 2010, there are certain rights for which civil society continues to advocate. These include issues related to:

- Freedom of expression;
- Access to information;
- Ownership, control and access to both collective (community) and personal resources/assets, especially land rights;
- Compensation;
- Gender equality; and
- Community benefit sharing from the exploitation of natural resources by development projects.

In Kenya, there is also a vibrant culture of association for issue-based organizations to enhance the agenda of a certain sector or facet of the community. As such, there is a myriad of umbrella organizations that champion for specific socio-economic issues at county and national level.



Photo: USAID/Carole Douglas

Wayleaves for transmission lines require agreements on land use and are a critical community engagement consideration.

COMMUNITY BENEFIT SHARING

Benefit sharing is a pertinent issue for private sector developers in Kenya, particularly since communities have become more aware of their rights to reap benefits for resources mined in their “backyard.” In most cases, developers should operate from the premise that communities will anticipate some form of tangible benefit—usually financial—from a power project.

Benefit sharing is defined in Kenya as the fair and equitable sharing—among the national government, county governments, and affected local communities—of any gains, proceeds or profits arising from the exploitation or utilization of natural resources.²³

In fact, Article 69(1) of the Constitution requires the state to ensure equitable sharing of benefits accruing from the exploitation of natural resources. Moreover, Article 66(2) of the Constitution instructs Parliament to “enact legislation ensuring that investments in property benefit local communities and their economies.”

At the time of this guide’s publication, Kenya’s Parliament was considering a proposed Benefit Sharing Bill that makes provisions for benefit sharing agreements for projects involving petroleum, natural gas, minerals, forest resources, water resources, wildlife resources, and fishery resources. The possibility exists, however, that other natural resources may be included, either prior to the Bill’s enactment or thereafter via gazettelement, and will bear watching.

In the absence of an enacted law and requisite regulations, however, **it is important to identify strategic partners in both the national and county governments, as well as perhaps even civil society, who can assist in negotiation and agreement with target communities on benefit sharing.** A good understanding by the community about the project will help manage community expectations about benefit sharing. Meanwhile, it will be prudent to track the development of any community benefit sharing policies, laws, and regulations at national and county government levels.

In the past, Kenyan communities initiated benefit sharing demands during ESIA studies or during discussions on land take and resettlement. Holding benefit sharing negotiations

in these stages may only help those who are to experience direct negative effects, as opposed to the entire target community. This can result in conflict, as the rest of the community also has a right to reap benefits, albeit those who are more directly affected by the project may feel that they deserve all or a larger percentage of benefits than the rest of the community. Discussion on benefit sharing with target communities should be well integrated into the community engagement program at the right time of the project cycle considering that development of power projects can take three to five years or more from conceptualization to the start of electricity generation.

COMMUNITY BENEFIT SHARING IN PRACTICE

Community Forest Associations (CFAs) are an example of community benefit sharing in Kenya. CFAs are formed and enter into management agreements with the Kenya Forest Service (KFS) in a deliberate effort to empower forest-adjacent communities to internalize the environmental value of forests while gleaning economic benefits from the forest ecosystem in a sustainable manner. One such CFA is the Arabuko Sokoke Forest Adjacent Dwellers Association, in the 420 km² Arabuko-Sokoke Forest Reserve in Kilifi County, which is co-managed by KFS and seven CFAs. Socio-economic benefits to the community include equity, conflict resolution, awareness, forest production, poverty reduction, and sustainable utilization of forest resources. Membership in the association also includes a considerable number of youth and women who benefit from employment opportunities such as silvicultural activities, the sale of forest-based products and eco-tourism, as well as butterfly farming for women who have limited time outside of their other household roles.²⁴

CSR IS NOT COMMUNITY BENEFIT SHARING

Corporate Social Responsibility (CSR) activities are sometimes confused as being part of community benefit sharing. While traditional CSR mostly revolves around corporate philanthropy and “giving back” to a community, community benefit sharing is actually a community right, as outlined in the Constitution.

Hence, do not confuse corporate commitment to philanthropic endeavors in the community as a replacement for a community benefit-sharing arrangement.

²³Kenya Gazette Supplement No. 137 (Senate Bill No. 34) The Natural Resources (Benefit Sharing) Bill, 2014

²⁴Koech, C.K., et. al. (2009). Community Forest Associations in Kenya: Challenges and Communities. Kenya Forestry Research Institute (KEFRI)

DISPUTE AND GRIEVANCE MANAGEMENT

Despite all efforts to inclusively and meaningfully engage community stakeholders, grievances may arise. If not managed properly, even small complaints can escalate into conflict and even lawsuits. **Designing and executing a comprehensive, efficient grievance management system is an essential business practice.**

Various Kenyan statutes address grievance management principles, including the Community Land Act 2014, Section 58, 59, 60 and 61, which outline the procedures to be undertaken in trying to resolve a grievance. The Act also provides a redress mechanism and for the allowance of traditional dispute-solving procedures. However, the Act is silent on the protection of participants in terms of their risk of retribution for participation, and does not provide for a budget, resources, or a feedback mechanism that is timely to the complainants.

The County Government Act, No. 17 of 2012, calls for a platform by which citizens will be able to submit their grievances. It is particular on the inclusion and provision of persons with disabilities, women, youth, traditionally marginalized communities and disadvantaged communities.

In general, alternative dispute resolution (ADR) mechanisms are promoted in the Constitution of Kenya and the National Land Policy. However, there are currently no regulations that govern ADR mechanisms and how it should be conducted in the country. Part of the problem in accessing ADR is that individuals and communities are more likely to resort to the judiciary, as the concept of ADR has not been internalized or accepted by individuals and communities.

CAUTION

Use of social media platforms to communicate with stakeholders should be approached cautiously, as it carries a risk to company reputation, particularly by online comments that may arise from false allegations, misinformed individuals, or genuine complainants. By the time there is an officially sanctioned response to an online debate, it may be too late with regard to public perception and reputation. Much more effort, time, and resources may then be required to manage crises that arise from the exchange.

A grievance mechanism should:

- enable grievances to be received and responded to in a timely manner
- enable for a redress mechanism where an external body can be brought in to solve a grievance where necessary
- be transparent and enable accountability in its processes
- be culturally appropriate
- be scaled to potential project risks
- be staffed and well budgeted

Moreover, grievance mechanisms must be gender-sensitive. In other words, women must hold leadership positions within the mechanism, and it should be designed to address the differential issues that women may bring forward such as those relating to gender-based violence, land ownership barriers, or compensation, for example.

Best practice requires that a grievance management mechanism be developed with the full participation of the target community, to promote ownership.



By increasing access to reliable, affordable, and sustainable electricity, Power Africa is working to support economic growth and development.

Photo: USAID/rene Angwenyi

COMMUNITY LEGAL REPRESENTATION

To ensure that the community is fully aware of their rights and understands the terms of any agreements, it would be helpful for the community to have access to their own legal representation—ideally someone who speaks a common language of the community and who has experience with marginalized communities and women-centered legal rights—especially when agreements and memoranda of understanding are to be signed.

On this point, there are two schools of thought:

1. The developer recruits and pays for legal services for the community as the project necessitated the need for legal services in the first place. The drawbacks of this approach include:

- a. The community may feel that the legal officers paid for by the developer are only loyal to the developer's needs and not the community's best interests;
- b. The community may not “own” that the legal officer represents them and may cite the perceived lack of partiality by the legal officers as a reason to renege on the agreements.

2. The community recruits and pays for legal services to be sure that the legal officers are representing them and have no affiliation to the developer. The challenges to this include:

- a. The community may not be able to afford to pay for the legal services;
- b. The community may not be able to mobilize the funds for legal services from third-party benefactors.

One strategy to avoid the above challenges is to identify, on the community's behalf, a civil society organization that can provide or assist with the recruitment and payment of these legal services. To facilitate acceptance of the legal officers by the community, the community can still be encouraged to assist with logistical and administrative costs, such as field allowances for the legal officers or printing services, etc. Another strategy is for the developer to pay for the legal services from an organization or law firm that the community chooses.

ENCOURAGING ALTERNATIVE DISPUTE RESOLUTION

The Land and Environment Court encourages complainants to utilize Alternative Dispute Resolution (ADR) mechanisms available outside the Court. For example, a private developer constructed a building in the riparian zone of a river. The County Government took the developer to the Land and Environment Court citing the prohibition of construction within the riparian zone. Considering that development approvals are provided by the same County Government raising the complaint, the Court directed that the two parties resolve the problem outside of the court system. By doing so, the two parties would not only avoid the costs related to legal representation in court, the indirect costs connected to environmental degradation and construction management would also be saved.

Source: Power Africa Stakeholder Interviews, November 2016.



Through the creation of solar-powered micro-grids, Maasai families are receiving power in their traditional homes (manyattas).

Power Africa/Morgana Wingard

DEVELOPING A GRIEVANCE MANAGEMENT MECHANISM

STEP 1: SENSITIZE THE COMMUNITY

- Discuss with the community your intention to establish a grievance mechanism to: a) collect and b) address grievances, complaints, concerns, disputes, suggestions, comments from the community that are relevant to the project
- Understand the existing grievance management processes used by the community and how they work
- Conduct participatory and gender-sensitive analysis with a faction of community members to determine how the existing systems can be used by the community and the developer, prior to integrating them into the project's grievance management system
- Solicit ideas from the community for establishing a grievance mechanism that will meet their expectations
- Ensure community consultation and sensitization includes women representatives as well as representatives from potentially marginalized groups such as people with disabilities, youth and indigenous people

STEP 2: PLAN THE PROPOSED GRIEVANCE MECHANISM

- Delineate levels of escalation and the responsible parties for addressing a grievance
- Identify grievance collection channels that you will use: an email address, website, an office, a phone number, SMS platform, etc. (NOTE: Avoid using social media as a medium to allow public grievances, although some people may air their grievances on such platforms you will need to find a constructive way to respond)
- Create an illustration of how the grievance mechanism will work
- Identify training needs for community, stakeholder and staff capacity building prior to launch of the system
- Identify risks to the system's ability to function and develop strategies to deal with these risks as they arise
- Identify resource needs and discuss with the community the costs that would be borne by the developer, county government, national government, the community, and other actors that may be called upon to help resolve a grievance
- Ensure that the proposed grievance mechanism is gender-sensitive in that it includes women's representation and can respond to gender-specific grievances



STEP 3:

ROLL OUT THE GRIEVANCE MECHANISM TO THE COMMUNITY

- Identify individuals whose influence can be used to ensure adoption and positive use of the grievance management system
- Conduct training of local government officials/ community influencers/CSOs/women's groups and networks on use of the grievance mechanism to help others utilize the system

STEP 4:

IMPLEMENT THE GRIEVANCE MECHANISM

- Monitor the use of and effectiveness of the grievance mechanism; adjust the system as necessary
- Track all grievances and document all activities utilized to address each grievance
- Disaggregate data collected by sex to monitor and ensure gender responsiveness of the mechanism

STEP 3: DOCUMENTATION, MONITORING & EVALUATION

From a business perspective, a developer should want to know if the investment made to engage the community (to help a project become a reality) is effective.

If community engagement activities are not documented and evaluated along the way, it is difficult to know what is working and what might be ineffective, superfluous, or at worst, having a counter effect on project goals. By monitoring and evaluating the effectiveness of community engagement activities, strategies and tactics can be adjusted during implementation to maximize success.

From a legal point of view, documenting community engagement efforts can be critical for defending lawsuits, in arbitration or ADR mechanisms, especially against claims of inadequate public participation.

To conduct an evaluation of community engagement activities, one must clearly document intended community engagement schedules, activities, and objectives vis-à-vis the actual implementation of the same. A comparison of the two would assist in identifying where the implementation fell short.

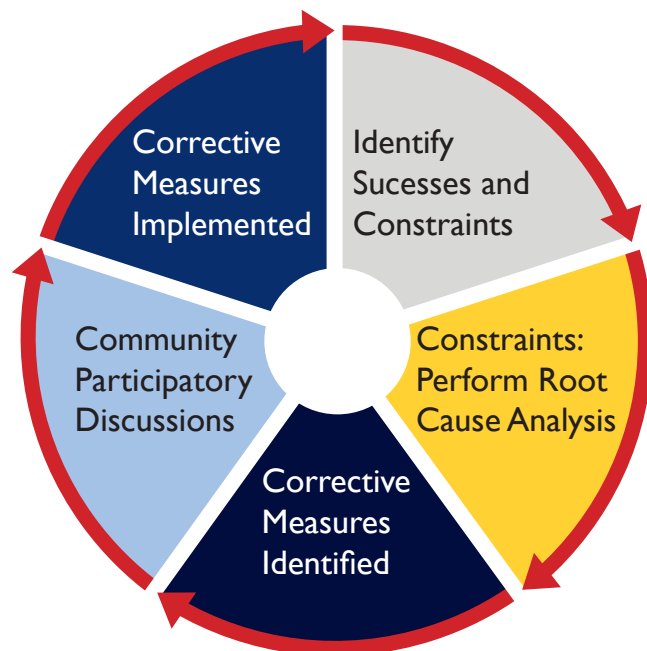
- A root cause analysis²⁵ of activities will identify areas that do not meet community and project expectations. The assessment of the root causes should be subjected to participatory appraisal.
- Discussions on possible corrective measures should also be held to determine their feasibility during implementation. Some emerging/unprecedented issues may also arise, prompting a need for specialized expertise to further investigate the root causes and to recommend some tried and tested strategies for corrective actions.
- Organizations should be proactive in consulting communities and following up on their feedback, as opposed to waiting for grievances to arise.

Communities may not have the mechanisms to provide for in-depth participation in project monitoring and evaluation (M&E) programs, especially regarding community health and safety, CSR programs, community benefit sharing, and community development initiatives by a developer.

The developer can step in to sensitize the community and facilitate mobilization of a mechanism to ensure that there is relevant and documented feedback during M&E activities. The developer may also need to invest in capacity building of the key members of the selected mechanism for community participation in M&E. This system would also be a useful tool in the tracking of resolution of grievances under a separate grievance management mechanism.

A sample checklist of monitoring indicators is presented on page 50-52.

MONITORING & EVALUATION FEEDBACK LOOP



²⁵Root cause analysis is the term ascribed to the action of uncovering the highest-level cause of a problem. Typically, removing the root cause from the problem-fault sequence prevents the original from recurring. See <http://asq.org/learn-about-quality/root-cause-analysis/overview/overview.html>.

HOW TO DOCUMENT COMMUNITY ENGAGEMENT ACTIVITIES

Attendance Register

- Prepare a standard sign-in sheet to use for all events where community members shall be present
- Collect Names, Gender, Date of Birth, Residence location, Phone number, and Signature
- Make sure they are dated for each meeting
- Have a staff member enter information for people who cannot read or write

Meeting Minutes

- Meeting minutes should be prepared by a staff member during the meeting and then signed immediately after by publicly mandated community representatives to confirm the accuracy of the proceeding
- Keep in mind that meetings are often a platform for community members to air grievances, hence in addition to documenting them in the meeting minutes, be sure to channel them to the grievance management system (see Dispute and Grievance Management Section on page 44)

Photographs

- Take as many photos as possible of as many participants as possible
- Activate the date and time stamp setting on the camera so that the date of each photo is indicated on the digital photo
- Make sure all photos are well filed and properly labeled

Video

- Film meetings from beginning to end and, if possible, display the running date and time counter for reference purposes
- Consider investing in professional videography services
- Make sure all video clips are well filed and properly labeled



Photo: USAID/Nichole Sobek

Documenting land use issues during a community consultation in Kiwanja.

SAMPLE MONITORING INDICATORS

Name of Indicator	Indicator Definition	Disaggregated by	Method of Data Collection/Tools	Responsibility
1. Number of stakeholders identified Unit: Number	This indicator measures the number of stakeholders identified during the stakeholder identification, analysis and mapping phase.	<ul style="list-style-type: none"> - Government Departments (National & County) - Non-Governmental Organizations - Community Groups - Chiefs: Male/Female - Village Elders: Male/Female - Faith-based groups - Youth: Male/Female - Other 	Stakeholder register Data should be collected during the stakeholder identification phase	Developer
2. Number of stakeholders reached Unit: Number	This indicator measures the number of stakeholders reached and their level of participation in community engagement activities.	<ul style="list-style-type: none"> - Government Departments (National & County) - Non-Governmental Organizations - Community Groups - Chiefs-Male/Female - Village Elders: Male/Female - Faith-based groups - Youth: Male/Female - Other Attendees of group discussions: <ul style="list-style-type: none"> - Management - Community at large - Both 	Stakeholder register Data should be collected during focus group discussions through the stakeholder attendance register	Developer
3. Number of identified risks Unit: Number	This indicator measures the number of risks arising from or connected to community engagement.	Type of Risk and Risk Level (High, Medium and Low): <ul style="list-style-type: none"> · Stakeholder · Financial · Social · Human rights · Environmental · Health and Safety · Reputational · Other 	Risk Register Through community engagement activities	Developer

Name of Indicator	Indicator Definition	Disaggregated by	Method of Data Collection/Tools	Responsibility
4. Number of identified risks mitigated Unit: Number	This indicator measures the number of identified risks mitigated by community engagement.	Type of Risk and Risk Level (High, Medium and Low): · Financial · Social · Environmental · Health and Safety · Reputational · Human rights · Other	Risk Register Through community engagement activities	Developer
5. Agreements and Plans developed with community buy-in Unit: Number	Measures the existence of all agreements and plans developed for community engagement. May include a communication/information plan; grievance management plan; community sensitization plan, community engagement activities, etc.	Type of Plan and Stakeholders affected	Documents developed/ Minutes of Meetings	Developer
6. Negotiation and agreements signed Unit: Number	Measures all final agreements approved by all parties.	Type of Agreement and Stakeholders affected	Documents developed/ Minutes of Meetings	Developer and Community
7. Community engagement strategies implemented Unit: Number	Measures the number of community engagement strategies implemented/ adopted to address community concerns.	Strategy and Stakeholders affected	Documents developed/ Minutes of Meetings	Developer and Community

Name of Indicator	Indicator Definition	Disaggregated by	Method of Data Collection/Tools	Responsibility
8. Sensitization and capacity building activities conducted Unit: Number	This indicator measures sensitization and capacity building activities conducted.	Type of interaction and gender: · Public Barazas · Key Informant Interviews · Focus Group Discussions · Roundtable Meetings · Stakeholder Workshops <i>(Involvement of minority groups should be noted)</i>	Capacity Building Register	Developer and Community
9. Disputes and grievances reported in grievance management mechanism Unit: Number	Measures number of disputes and grievances.	Type of grievance and stakeholders affected: Male/Female	Grievance and Dispute Register/Minutes of Meetings	Developer and Community
10. Disputes and grievances resolved Unit: Number and Percentage	Measures number of disputes and grievances resolved.	Type of grievance and stakeholders affected: Male/Female	Grievance and Dispute Management Logbook	Developer and Community

The following pages contain a best practices checklist of community engagement activities and considerations for power project developers in Kenya. Activities that are required by Kenyan law are notated accordingly. This checklist is designed to be a comprehensive "to-do" list for meaningful and successful community engagement, as derived from the concepts and steps outlined throughout this Guide.

MASTER CHECKLIST OF COMMUNITY ENGAGEMENT ACTIVITIES AND CONSIDERATIONS

STEP I: PLANNING

STAFFING &
BUDGETING FOR
COMMUNITY
ENGAGEMENT

- ☐ Identify one or more internal staff member(s) at the upper management level who will be responsible for the community engagement process (p. 23)
 - ☐ Update existing management roles and responsibilities (Terms of Reference/Job Description/Performance Objectives) to include community engagement roles/responsibilities and targets
 - ▶ *Do not start negotiations with the community if you have not identified the key decision makers within your organization that are empowered to make commitments to the community on behalf of your company*
- ☐ Identify internal staff/consultant(s) to execute initial stages of community engagement (p. 23)
 - ☐ Update existing management roles and responsibilities (Terms of Reference/Job Description/Performance Objectives) to include community engagement roles/responsibilities and targets
 - ▶ *Do not send staff to engage the community if you have not equipped them with the necessary resources to deal with community issues*
- ☐ Prepare annual work plans and related budgets from social management plans in line with the project calendar year (p. 23)
- ☐ Budget for and allocate funds for preliminary community engagement (p. 23)

STEP I: PLANNING

STAKEHOLDER IDENTIFICATION MAPPING & ANALYSIS

- ☐ Conduct initial stakeholder identification and analysis through a desk study or interdisciplinary group discussion (p. 24)
- ☐ Identify target communities (p. 24)
- ☐ Confirm target community leadership systems (p. 24-25)
 - ▶ *If the community leaders have not been validated by the community in public, do not start discussions with them*
 - ▶ *Be wary of self-interest among community leadership and ensure that you always get public consensus from the community members themselves*
- ☐ Identify and map other stakeholders or stakeholder groups relevant to community engagement (p. 24-25)
 - ☐ A map will help visualize what influences various stakeholders have on community engagement objectives and ensure easy identification of gaps in terms of representation by all facets of the community
 - ☐ Ensure stakeholders include men and women, and representatives from marginalized groups, and address gaps depending on the findings of the stakeholder analysis
 - ▶ *Do not proceed with allocation of resources for community engagement if you are not clear on the particular additional efforts that must be undertaken for minority and marginalized groups, such as women, persons with disabilities, ethnic minorities, etc.*
- ☐ Develop a Communications Plan with practical venues, platforms, mass media, crisis response systems (p. 31)
- ☐ Determine the need for additional inputs for indigenous peoples (p. 28-30)
- ☐ Determine potential supporters, partners, opposers and challengers to project objectives (p. 24)
- ☐ Create a stakeholder database (p. 24)
- ☐ Update the Project Risk Assessment Matrix with findings from the stakeholder analysis (p. 24)
- ☐ Develop a preliminary community engagement strategy (p. 23-24)
 - ☐ Determine the guiding principles that will be applied throughout the community engagement process
 - ☐ Develop standard operating procedures for preliminary community engagement
- ☐ Conduct courtesy calls with validated community leaders and local administration (p. 24)
- ☐ Establish a monitoring and evaluation system replete with corrective action procedures (p. 48)
 - ☐ Integrate the community engagement processes into business management systems and procedures
 - ☐ Establish an internal mechanism for reporting to upper management
 - ▶ *Do not start engagement if the documentation procedures for data collection for monitoring and evaluation are not clear to all staff*

STEP I: PLANNING

WHAT TO ENGAGE
ON AND WHEN TO
ENGAGE

- ☐ Determine project milestones and align to your community engagement framework (p. 32-33)
- ☐ **REQUIRED BY KENYAN LAW:** Determine project-related decisions that affect the community and engage them thereon [EMCA, 1999] (p. 31)
- ☐ **REQUIRED BY KENYAN LAW:** Document the “No Objection” from the community to allow for exploratory surveys for technical feasibility analysis [Energy Act, 2006, The Energy (Electricity Licensing) Regulations, 2012] (p. 17 & 32)
 - ▶ *If your target community is indigenous, do not proceed without Free, Prior and Informed Consent*
 - ▶ *If your preliminary due diligence determines that the targeted land for development has a fraudulent or suspected fraudulent title, do not proceed. Seek legal advice*
- ☐ Document initial community expectations to determine what can be achieved within the financial realities of the project (p. 36)
- ☐ Conduct preliminary community engagement for social assessment of potential target communities, baseline surveys, introductory meetings, etc. (p. 34)
- ☐ Document the community event calendar and adjust the engagement program accordingly (p. 34)
- ☐ Align submission of environmental and social safeguard instruments with the project development milestones (p. 32-33)

STEP 2: ENGAGEMENT

- ☐ Develop messages that are in an appropriate format, comprehensible language, and accessible to all factions and sub-groups of the community (p. 36)
- ☐ Develop documentation for disclosure of project design information: concepts, project objectives, site plans, layouts, technologies (p. 36)
- ☐ Firm up the community engagement strategy (p. 36-37)
- ☐ Develop and implement a community capacity building program after a participatory needs assessment (p. 37-38)
- ☐ Conduct community mobilization where it is deemed necessary (p. 37)
- ☐ Document community expectations (p. 36)
- ☐ Discuss/clarify community assumptions and integrate negotiation and agreement processes (p. 37 & 40)
 - ▶ *If there is no demonstration of consensus on a certain milestone, stop to resolve the issue prior to proceeding*
- ☐ Develop a strategy for management of community expectations (p. 40-43)
- ☐ Track progress of grievance resolution process (p. 44)
 - ▶ *If there are no reports on grievances or progress made on grievance redress, intervene as it is likely that the recording system is not functioning adequately; it is extremely rare to not have any complaints*
 - ▶ *Confirm community understanding and acceptance of the grievance management system through a proper disclosure program before proceeding with implementation of the mechanism*

STEP 2: ENGAGEMENT



REQUIRED BY KENYAN LAW: Conduct an Environmental and Social Impact Assessment [EMCA, 1999] (p. 31-32)



Conduct a Resettlement Action Plan Study to manage land take impacts by the project (p. 31-32)

- ▶ *Do not proceed with Resettlement Action Plan implementation until you get consent in the form of: A signed document/MoU with the target community for livelihood restoration at community level*
- ▶ *A signed document with the representative household head and spouse(s) for household level compensation/resettlement programs*



Develop an action plan to establish legal recognition of customary rights to lands or territories traditionally owned, used, or occupied by indigenous peoples where a project involves acquisition of such lands (p. 17-19;25;28-30)

- ▶ *Ensure that if and where women are excluded in customary law or practice from owning land or property, that measures are included in the action plan to protect women's interests in resettlement and compensation*



Develop an Indigenous Peoples Development Framework/Plan for indigenous peoples affected by your project (p. 32-33)

- ▶ *Do not proceed without Free Prior Informed Consent (FPIC) by the Indigenous Peoples*



Develop a Gender Action Plan that includes interventions to ensure meaningful engagement with women and promotion of women's leadership, and that documents identified issues of concern for women, along with mitigation measures to be monitored (p. 27-28)

STEP 3: DOCUMENTATION MONITORING & EVALUATION

- ☐ Mobilize community and stakeholder groups to facilitate participatory monitoring and evaluation (p. 48)
- ☐ Conduct participatory monitoring and evaluation of management and development plans that require community feedback (p. 48)
- ☐ Implement documentation procedures, and ensure that data is sex-disaggregated (p. 48;50-52)
- ☐ Establish repository for records and data (p. 48-49)
- ☐ Conduct regular monitoring activities (p. 48)
- ☐ Conduct a root-cause analysis to identify areas that do not meet community expectations or project objectives (p. 48)
- ☐ Conduct periodic evaluation activities (p. 48)

APPENDICES AND ANNEXES



Camels graze on the wind farm at the Lake Turkana Wind Project.

Photo: © Lake Turkana Wind Project (www.ltwpp.co.ke)

APPENDIX I: ACRONYMS

ACRONYM	MEANING
AfDB	African Development Bank
ACHPR	African Commission on Human and Peoples Rights
ADF	African Development Fund
ADR	Alternative Dispute Resolution
BSA	Benefits Sharing Agreement
CBO	Community-Based Organization
CIDP	County Integrated Development Plans
CEM	County Executive Member
CESMP	Construction Phase Environmental and Social Management Plan
CFA	Community Forest Association
COD	Commercial Operation Date
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
EHS	Environmental Health and Safety
EMCA	Environmental Management and Coordination Act
ERC	Energy Regulatory Commission
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
FBO	Faith Based Organization
FGD	Focus Group Discussion
FPIC	Free Prior Informed Consent
GBV	Gender-based Violence
GMSP	Grid Management Support Program
GoK	Government of Kenya
GW	Gigawatt
HIV	Human Immunodeficiency Virus
IFC	International Finance Corporation
IFI	International Finance Institution
IP	Indigenous Peoples
IPP	Independent Power Producer
IPPF	Indigenous Peoples Policy Framework
IT	Information Technology
KATO	Kenya Association of Tour Operators
KBC	Kenya Broadcasting Corporation
KenGen	Kenya Electricity Generating Company
KETRACO	Kenya Electricity Transmission Company Limited
KFS	Kenya Forest Service

ACRONYM	MEANING
km	Kilometer
KNCE	Kenya National Council of Elders
KNCHR	Kenya National Commission on Human Rights
KWS	Kenya Wildlife Service
LGBT	Lesbian, Gay, Bisexual and Transgender
L.R. NO	Land Reference Number
MAST	Mobile Applications to Secure Tenure
M&E	Monitoring and Evaluation
MCA	Member of County Assembly
MoEP	Ministry of Energy and Petroleum
MoU	Memorandum of Understanding
MP	Member of Parliament
MW	Megawatt
NEMA	National Environment Management Authority
NGO	Non-governmental Organization
NIUPLAN	Nairobi City Integrated Urban Development Master Plan
NLC	National Land Commission
NLP	National Land Policy
OPIC	U.S. Overseas Private Investment Corporation
PESTLE	Political Economic Social Technical Legal and Environmental
PRA	Participatory Rural Appraisal
PS	Performance Standards
RAP	Resettlement Action Plan
REA	Rural Electrification Authority
SEA	Strategic Environmental Assessment
SMS	Short Message Service ("Text Message")
SWOT	Strengths Weaknesses Opportunities and Threats
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
U.S.	United States
USAID	United States Agency for International Development
USEA	United States Energy Association
WRA	Water Resources Authority

APPENDIX 2: GLOSSARY

Alternative Dispute Resolution

These are mechanisms outside of the judicial system that aim to resolve disputes between two or more parties. The Constitution of 2010²⁶ promotes such mechanisms, which can include traditional dispute resolution mechanisms, to lessen the burden on the court system and provide greater access to justice for Kenyans.

Corporate Social Responsibility

Corporate social responsibility is the contribution by a company to the well-being of the community(ies) and the society they affect and on which they depend, through operational improvements, philanthropy, and/or business model transformation.²⁷

Courtesy Calls

These are visits or calls made by project developers, consultants or companies to the stakeholders such as national ministries, County Government offices and community leaders to inform them of their intentions in the project area. They can also be conducted to give updates or pass on appreciation for support in one's endeavors.

Environmental and Social Screening

The process of identifying environmental and social components that are actual or foreseen legal requirements or issues, and gap analysis relating to the project during implementation and operation.²⁸

Female Empowerment

Female empowerment is achieved when women, girls, and female adolescents acquire the power to act freely, exercise their rights, and fulfill their potential as full and equal members of society. While empowerment often comes from within, and individuals empower themselves, cultures, societies, and institutions create conditions that facilitate or undermine the possibilities for empowerment.

Financial Close

The execution of financing documents or the execution of the financing documents and the satisfaction of all the conditions for disbursement of the project loans. A project reaches financial close only after the developer has demonstrated project feasibility and commercial and financial viability, including environmental and social assessments, land surveys, power purchase agreements, and government approvals and permits.²⁹

Free, Prior, and Informed Consent

Free, Prior and Informed Consent is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.³⁰

Gender Equality

Gender equality concerns women and men, and it involves working with men and boys, women and girls to bring about changes in attitudes, behaviors, roles, and responsibilities at home, in the workplace, and in the community. Genuine equality means more than parity in numbers or laws on the books; it means expanding freedoms and improving the overall quality of life so that equality is achieved without sacrificing gains for males or females.³¹

Gender Inequality

Gender inequality refers to the unequal access to and control over the various material and non-material resources and assets of the society. In all societies, the woman's role is the inferior one in the relationship.³²

Historical Injustices

In this context, historical injustices are grievances that stretch back to colonial land administration practices and laws that resulted in mass disinheritance of communities of their land; grievances that have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, treaties and agreements between local communities and the British. The grievances remain unresolved because successive post-independence Governments have failed to address them in a holistic manner.³³

²⁶Constitution of Kenya 2010, Article 159(2)(c)(3)

²⁷The Truth About CSR, Rangan, V. K., Chase, L., Karim, S., Harvard Business Review, Jan-Feb. 2015

²⁸Sourcebook on EU Environmental Law (2010) Institute for European Environmental Policy

²⁹Understanding Power Purchase Agreements - Version 1.3, 2014 (Published under the Creative Commons License)

³⁰Forest Peoples Program (<http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>)

³¹Sex is the classification of people as male or female. At birth, infants are assigned a sex based on a combination of bodily characteristics including: chromosomes, hormones, internal reproductive organs and genitalia. Gender is the socially-defined set of roles, rights, responsibilities, entitlements, and obligations of females and males in societies. The social definitions of what it means to be female or male vary among cultures and change over time. Gender Identity is an individual's internal, personal sense of being male or female. For transgender people, their birth-assigned sex and their own internal sense of gender identity do not match.

³²European Institute for Gender Equality (<http://eige.europa.eu/gender-mainstreaming/concepts-and-definitions>)

³³Sessional Paper No. 3 of 2009 on National Land Policy, Government of Kenya, Ministry of Lands, August 2009

Indigenous Peoples

While there are no universally accepted definitions of Indigenous Peoples,³⁴ they can be generally defined as a group of persons that still rely on land-based traditional economies. They are considered to be inextricably linked to the land on which they live and natural resources on which they depend.³⁵ In practice, there are several characteristics that are used to confirm that a community is an indigenous group.

Marginalized Groups

These are disadvantaged or vulnerable individual members of the community stemming from race, color, sex, language, religion, political, or other opinion, national or social origin, gender, age, ethnicity, culture, literacy, sickness, physical or mental disability, poverty or economic disadvantage and dependence on unique natural resources.³⁶

Minority Groups

A category of people differentiated from the social majority. A subordinate group whose members have significantly less control or power over their lives than members of a dominant or majority group.³⁷

No Objection

This is a document originating from the community indicating that they accept (i.e. do not object) to the project being proposed within their geographic area of their community. A letter of “No Objection” is required by the Energy Regulation Commission for licensing purposes for power projects. Sometimes, this is also referred to as a “social license.”

Persons with Disabilities

A person with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.³⁸

Public Private Partnerships

Arrangements between the public and private sectors whereby a service or piece of infrastructure that is ordinarily provided by the public sector is provided by the private sector with clear agreement on the allocation of associated risks and responsibilities. The Public Private Partnership Act, No. 15 of 2013 provides for entities that shall oversee all projects and liaise with all stakeholders during the entire life of any project.³⁹

Participatory Rural Appraisal

Participatory rural appraisal (PRA) is a label given to a growing family of participatory approaches and methods that emphasize local knowledge and enable local people to make their own appraisal, analysis, and plans. PRA uses group animation and exercises to facilitate information sharing, analysis, and action among stakeholders.⁴⁰

Project Footprint

The physical space required for establishment of project infrastructure and support facilities. The information is usually provided from project layouts developed from design documents.

Project Log Frame

A tool for improving the planning, implementation, management monitoring and evaluation of projects. The log frame is a way of structuring the main elements in a project and highlighting the logical linkages between them.⁴¹

Project Risk Assessment

This is the identification of certain hazards and the severity of impacts resulting from such occurrences that would require mitigation and/or monitoring. Large-scale development projects represent a dramatic change for communities, and while this change may lead to opportunity for some, it may put others at risk, despite project efforts to be socially and environmentally responsible, and despite genuine attempts to engage communities and create project safeguards. Risk and change work hand in hand to create conditions where community conflicts arise.

Project Zone of Influence

This is the physical space within which project impacts are felt. It includes the project footprint, the spatial extent of project impacts on the biophysical environment as well as the intangible socio-cultural and institutional (human) environment.

Resettlement Planning Framework

An instrument required by International Finance Institutions to facilitate planning for resettlement projects. Resettlement Planning Frameworks are prepared when the project land take requirements are yet to be fully established. They can act as a precursor to a Resettlement Action Plan.

³⁴IFC Performance Standard 7 on Indigenous Peoples

³⁵Clinic on the Indigenous Peoples Policy (OP 4.10), World Bank, 2009

³⁶IFC Performance Standards on Environmental and Social Sustainability

³⁷Schaefer RT, 1993, Racial and Ethnic Groups

³⁸U.S. Department of Housing and Urban Development (https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/inhousing)

³⁹Public Private Partnership Act, No 15 of 2013.

⁴⁰The World Bank Participation Sourcebook Appendix I: Methods and Tools, 2007

⁴¹DfID UK, 2002 A Handbook for those involved in development activity.

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ANNEX I: KENYAN LAWS PERTAINING TO PUBLIC PARTICIPATION

This register highlights Kenyan statutes that mention public participation. It should be noted that constitutional provisions of the Kenya Constitution precede all statutory instruments. For this reason, even if a statute does not provide for public participation, it is presumed to be embedded by virtue of the constitutional provisions. One may say therefore that public participation is now part of the legal infrastructure of Kenya. To that extent, public participation need not be given any specific statutory recognition because the Constitution requires it.

It will be noted that public participation is a constant rejoinder in almost all statutes which have been enacted after the promulgation of the Constitution in 2010, but this does not mean that the statutes legislated prior to the Constitution are exempt.

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
National Land Commission Act, No. 5 of 2012	National Land Commission (NLC)	To administer all unregistered trust land and unregistered community land on behalf of the county government.
		To encourage the application of traditional dispute resolution mechanisms in land conflicts.
County Governments Act, No. 17 of 2012	County Government	<p>Part VIII of the Act on Citizen Participation (87) (b) emphasizes the right of citizens to participate in any development project prior to its implementation.</p> <p>Section 90 reiterates that citizens have a right to petition the county government on any matter under the responsibility of the county government. On a more expansive scale, the Act provides that a county government may conduct a local referendum on local issues, county laws and petitions, or planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty-five percent of the registered voters where the referendum is to take place.</p> <p>Section 91 envisages that the county government shall facilitate the establishment of modalities, and platforms for citizen participation e.g. town hall meetings, barazas, IT-based technologies and establishment of citizen fora at county, sub-county and village levels.</p> <p>Sections 94, 95 and 96 require counties to establish mechanisms to facilitate public communication and access to information using media with the widest public outreach. It is envisaged that every county shall designate an office for ensuring access to information.</p>

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
County Governments Act, No. 17 of 2012 (Cont'd)	County Government (Cont'd)	<p>Sections 100 and 101 indicate that as a necessity for public participation, every county is required to create an institutional framework for civic education.</p> <p>Section 113 makes public participation in county planning processes compulsory. It specifies the principles of public participation and further reiterates timely access to information and reasonable access to planning and policy making process as important components of good governance.</p> <p>Discussion on opportunities for public participation in the county government:</p> <p>(i) Establishment of Sectoral Committees</p> <p>Under the Standing Orders that regulate the working of County Assemblies, each County Assembly is required to set up Sectoral Committees that deal with different economic, social and administrative sectors in the county. These committees are required to involve the public in the execution of their functions. Consequently, the committees permit citizen participation in a variety of ways, including attending and making submissions to committees when they are:</p> <ul style="list-style-type: none"> • Scrutinizing legislation and regulations related to their areas of jurisdiction; • Considering petitions referred to them and conducting inquiries on matters that arise from the county executive's handling of issues that fall under the purview of the committee; • Sending petitions to the County Assembly for consideration by committees and attending the plenary sessions to listen to the presentation and debate of committee reports on issues that are of concern to them. <p>It is during the debates on sectoral issues, at the county assembly level, that the public may raise issues on any matter that relates to their area of abode. This may include development projects and their impact on community welfare or environmental effects. It should thus be recognized that Sectoral Committees are important organs of public participation in every segment of community life.</p> <p>(ii) Preparation of County Integrated Development Plans</p> <p>Development of County Integrated Development Plans (CIDP) offers opportunities for public participation in setting out strategic priorities for the medium term, programs to be delivered and grants, transfers and subsidies to be made. It is during this process of preparing the CIDP that the public may object to, or raise an inquiry into any project that may be on the development calendar for the year.</p> <p>Ordinarily, the plans will go through three main stages in which the public may engage: Formulation by the County Planning Unit; Approval by the County executive; and Tabling and approval in the County Assembly.</p>

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
Transition to Devolved Government Act, No. 1 of 2012	County Government	Section 14 requires public participation in the transition process. This is to apply to the transition of all functions under the defunct local authorities to the devolved units established under the Constitution 2010.
Land Laws (Amendment) Act, 2016	Ministry of Land Housing and Urban Development National Land Commission	The land registration process requires the involvement and engagement of the people residing in the land by creating awareness on the adjudication process and taking an inventory of their land.
Intergovernmental Relations Act, No. 2 of 2012	County Government	<p>The Intergovernmental Relations Act establishes a framework for consultation and cooperation between the national and county governments and amongst county governments and to establish mechanisms for the resolution of intergovernmental disputes.</p> <p>Section 3(d) provides a framework for the inclusive consideration of any matter that affects relations between the two levels of government and amongst county governments.</p> <p>Section 4(a) and (b) states that the framework may be utilized in times of resource conflict between communities across counties. It is, therefore, an important law when it comes to dealing with disagreements on resource sharing. This is based on a recognition of the sovereignty of the people as provided for under Article 1 of the Constitution and the need to establish an inclusive and participatory governance.</p>
Public Private Partnership Act, No. 15 of 2013	Ministry of Finance and National Treasury	<p>This Act provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the government through concession or other contractual arrangements and the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects.</p> <p>Section 17(1)(f) stipulates that public private partnership nodes formed between a contracting authority and a private party shall 'liaise with all stakeholders during the entire project cycle.'</p>
Environmental Management and Coordination (Amendment) Act, 2015	National Environment Management Authority (NEMA)	NEMA is mandated with approval and licensing of proposed projects in consultation with other county departments. This will involve also verifying that the proposed project has been accepted by the community and adequate and informative consultations have been conducted with the community.

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
Employment Act, No. 11 of 2007	Ministry of Labour, Social Security and Services	All the procedures involved in employing the local community should comply with the Act.
Environment and Land Court Act, No. 19 of 2011	Land and Environment Court	<p>The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.</p> <p>Section 13(2)(b) of the Act outlines that, in exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have the power to hear and determine disputes relating to environment and land, including disputes:</p> <ul style="list-style-type: none"> • Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; • Relating to compulsory acquisition of land; • Relating to land administration and management; • Relating to public, private and community land and contracts, or other instruments granting any enforceable interests in land; and • Any other dispute relating to environment and land.
<ul style="list-style-type: none"> • Constitution of Kenya 2010 • Community Land Act, No. 27 of 2016 	Kenya National Human Rights Commission	KNHRC are instrumental in grievance management where they are mandated to redress, investigate cases and conduct public consultation and training with the aim of reaching a desired common ground for any form of (community) development.
Kenya Wildlife Conservation and Management Act, No. 47 of 2013	Kenya Wildlife Services	<p>Section 4(b) states that conservation and management of wildlife shall entail effective public participation.</p> <p>Section 4(g) states that benefits accruing from wildlife conservation and management shall be enjoyed and equitably shared by the people of Kenya.</p>
Urban Areas and Cities Act, No. 13 of 2011	County Government	Sections 21 and 22 of the Urban Areas Act supports the participation by the residents in the governance of urban areas and cities. The Second Schedule to the Act provides for the rights of, and participation by, residents in affairs of their city or urban areas.
Community Land Act, No. 27 of 2016	National Land Commission (NLC)	Section 12(1)(2) requires the Commission to ensure that the process of documenting, mapping and developing an inventory of community land is transparent, equitable, cost effective and participatory. It also requires the Commission to:

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
Community Land Act, No. 27 of 2016 (cont'd)	National Land Commission (NLC) (cont'd)	<ul style="list-style-type: none"> • Issue a public notice of at least thirty days, declaring the area of land to be classified as community land; • Ensure actual involvement and engagement of the community by creating awareness of the process and taking an inventory of their land and resource rights; • Undertake the actual physical demarcation of the land and delineation of boundaries by involving the people; • Ensure that all relevant documents are reviewed and agreed upon by the community and the relevant government agencies; • Oversee the formation of community land management committees; and • Ensure that certificate of title to the community land is conferred to the community land management committee. <p>Section 38 on conservation and management of resources in community land states that the Commission may make rules and regulations for the sustainable conservation of land based natural resources within community land such as:</p> <ul style="list-style-type: none"> • Measures to protect critical ecosystems and habitats including wetlands and community forests; • Incentives for communities and individuals to invest in income generating natural resource conservation programmes; • Measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources; • Procedures for the registration of natural resources in an appropriate register; and • Procedures for the involvement of stakeholders in the management and utilization of land-based natural resources. <p>PART V on conversion of land, Section 39(3), requires that before conversion of community land into any other category of land, a general meeting of the community must grant approval for such conversion. Section 40(2)(3) states that community land shall be compulsorily acquired only if it is for a public purpose or public interest subject to prompt payment in full of just compensation to the community, and that transfer of community land shall, subject to the approval of the members of the community in a general meeting, be done in accordance with the Land Act. Section 41(2) requires that conversion of land requires approval of members of the community in a general meeting in the case of land managed and administered by a committee. Section 44 requires that adequate compensation shall be made to the affected community where land is set aside for public purposes.</p>
Climate Change Act, No. 11 of 2016	National Climate Change Council	Part V Section 24 requires public entities at each level of government to undertake public awareness and conduct public consultations at all times when developing strategies, laws, and policies relating to climate change. It further states that these consultations shall be undertaken in a manner that ensures the public contribution makes an impact on the threshold of decision making. The Council, on the recommendation of the Cabinet

ACT	NAME OF INSTITUTION	RELEVANCE TO COMMUNITY ENGAGEMENT
Climate Change Act, No. 11 of 2016 (cont'd)	National Climate Change Council (cont'd)	<p>Secretary, is required to publish regulations on design and procedure to ensure the efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government and publish and publicize all important information within their mandate. It finally also outlines the procedure that shall be followed when the public wants to seek some information from the Council.</p> <p>Section 30 on Public Engagement Strategy requires the Council to prepare and publish a public engagement strategy every twelve months setting out the steps that it intends to take to:</p> <p>(a) inform the public about climate change action plans specified under this Act; and (b) encourage the public to contribute to the achievement of the objectives of those action plans.</p> <p>This strategy shall, in particular, identify actions which the public may take to contribute to the achievement of objectives of the Act and allow for review of the public engagement strategy from time to time and publish the strategy as so reviewed.</p>
Protection of Traditional Knowledge and Traditional Cultural Expressions Act, No. 48 of 2015	National Competent Authority (Not defined in Act)	<p>Section 19 highlights the requirements that shall be adopted in an authorized user agreement whenever derivative work that is based on traditional knowledge or traditional cultural expressions is to be used for a commercial or industrial purpose.</p> <p>Section 16 on protection of traditional cultural expressions against unlawful acts requires the National Competent Authority to establish mechanisms that will ensure that where the use or exploitation is intended to be gainful, equitable remuneration or benefit sharing on terms determined and agreed with the relevant community is in place, or in its absence it shall be determined by the National Competent Authority in consultation with the relevant community.</p> <p>Part VI Section 24 states that an authorization to exploit traditional knowledge and traditional cultural expressions shall be granted by the holders of traditional knowledge and traditional cultural expressions or where the holders so wish, from the National Competent Authority, on the request and behalf of the holders. Where the National Competent Authority is to grant an authorization, it shall not grant the authorization before undertaking appropriate consultations with the relevant communities, in accordance with their traditional processes for decision-making and public affairs management and that uncertainties or disputes relating to the determination of the communities shall be resolved, in so far as is possible, in accordance with customary laws and protocols of the communities involved.</p> <p>Section 27 outlines the procedures that the National Competent Authority shall undertake before determining an application for consent in as far as use of traditional knowledge and culture is concerned.</p>

ANNEX 2: KEY STAKEHOLDER GROUPS IN KENYA'S POWER SECTOR

The table below identifies and analyzes, at a high-level, the key stakeholder groups⁴² a power project developer is likely to interact with when engaging communities in Kenya. The matrix outlines the importance of specific stakeholder groups to community engagement as well as the type of influence they are likely to have on developer-community relations. It does not show the importance, however, of the stakeholder groups in relation to each other and is only meant to show their importance to the general community that one may be interacting with at various stages of the project.

This analysis can therefore be used to inform the stakeholder analysis as well as the development of a communication strategy.

It is important to note that some stakeholder groups with permitting and licensing roles also have mandates in promotion of energy development in Kenya. Depending on the project stage, therefore, these stakeholder groups may have a different effect on developer-community relations at project development stages as compared to project implementation stages.

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Ministry of Energy and Petroleum (MoEP)	<ul style="list-style-type: none"> • Energy Policy and Development • Hydropower Development • Geothermal Exploration and Development • Rural Electrification Programme • Renewable Energy Promotion and Development • Energy Regulation, Security and Conservation 	4	Very Important	4	Significant Influence
Energy Regulatory Commission (ERC)	<p>The mandate of the ERC was broadened to include petroleum and renewable energy sector through the enactment of the Energy Act, 2006.</p> <p>Roles include:</p> <ul style="list-style-type: none"> • Regulation of electrical 	5	Critical player	5	Very Influential

⁴² As of August 2017

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Energy Regulatory Commission (ERC) (cont'd)	energy, petroleum and related products, renewable energy and other forms of energy. <ul style="list-style-type: none"> • Protection of the interests of consumer, investor and other stakeholder interests. • Monitoring, ensuring implementation and observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities. • Performance of any other function that is incidental or consequential to its functions under the Energy Act or any other written law. 				<p>processes in energy development and to promote justice in protection of consumer, investor and other stakeholder interest.</p> <p>However, if the main social risk being faced by a developer is lack of project acceptance, a public hearing can assist in determination of the root causes of community opposition to the project.</p> <p>The decision to hold or not to hold a public hearing during the permitting process lies with ERC.</p>
				4 Significant Influence	<p>Can have a <i>positive influence</i> on community perception to the project by disseminating independently verified information about a project. This is important in cases where the community has been misinformed about the project.</p> <p>Can also have a <i>positive effect</i> on developer-community relations when they lead a grievance resolution process that results in a win-win outcome.</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Rural Electrification Authority (REA)	<p>To accelerate the pace of rural electrification in order to promote sustainable socio-economic development</p> <p>Manage the Rural Electrification Programme and the Rural Electrification Fund</p>	5 Critical player	Interest in development of off-grid projects so as to meet their objectives on promotion of rural electrification	5 Very Influential	With regard to licensing and permitting at project level, REA should be <i>non-partisan</i> for transparent permitting and licensing procedures.
			Should be non-partisan to promote transparent processes in energy development and to promote justice in protection of consumer, investor and other stakeholder interests.		However, REA can have a <i>positive effect</i> on developer-community relations when they lead a grievance resolution process that results in a win-win outcome.
				4 Significant Influence	<p>With regard to grievance management through public hearings:</p> <p><i>Positive</i> by disseminating independently verified information about a project, thus changing negative (misinformed) public perception.</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
National Environment Management Authority (NEMA)	<ul style="list-style-type: none"> • Coordinating the various environmental management activities being undertaken by the lead agencies. • To take stock of the natural resources in Kenya and their utilization and conservation. • Examine land use patterns to determine their impact on the quality and quantity of natural resources. • Identify projects and programs for which environmental audit or environmental monitoring must be conducted under this Act. • Monitor and assess activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities. Management objectives must be adhered to and adequate early warning on impending environmental emergencies given. • Undertake, in cooperation with relevant lead agencies, programs intended to enhance environmental education and public awareness, about the need for sound environmental management, as well as for enlisting public support and encouraging the effort made by other entities in that regard. 	4 Very Important	On the basis of a right to a clean and healthy environment, communities can also complain to NEMA on public nuisance from environmental degradation by a developer during construction and operation phases of the project.	4 Significant Influence	Approval and licensing of proposed projects in consultation with other county departments. This includes verification of community engagement during the report review process and project acceptance by affected persons during public hearing.

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Water Resources Authority (WRA)	Give approvals for abstraction of surface and groundwater sources.	4 Very Important	<p>Water needs for power sector developers range from low demand for sanitation purposes in solar and wind energy production to high volumes as required by geothermal power producers or for the purpose of turning turbines in hydroelectricity projects.</p> <p>The same water resource targeted by a developer may also be a primary water source for a target or neighboring community.</p>	4 Significant Influence	WRA is a key partner in identification of potential conflicts as well as resolution of actual water use conflicts between a developer and the community.
National Land Commission (NLC)	<p>NLC has a variety of roles as mandated by the Constitution, National Land Commission Act, Land Act, Land Registration Act and the Community Land Act.</p> <ul style="list-style-type: none"> • Develop and maintain an effective land information management system at national and county levels; • Monitor the registration of all rights and interests in land; • Constitute registration units in consultation with national and county governments 	4 Very Important	<p>Variety of roles with regard to registration and management of land in Kenya. NLC is a key partner in all land matters.</p> <p>Information on land ownership with regard to registered land in Kenya under public, community and private land tenure.</p>	4 Significant Influence	Due diligence on land ownership (land search) is directed to the parent ministry (Ministry of Lands and Physical Planning) but NLC can declare fraudulent titles. ⁴³

⁴³Should due diligence analysis determine that land targeted by a developer or his contractors/sub-contractors is fraudulently titled, developers should avoid conducting any activities on said land as this can have an impact on the project itself and in extreme cases, the developer's reputation.

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
National Land Commission (NLC) (cont'd)	<ul style="list-style-type: none"> • Determine the form of a land register that shall be maintained, in each registration unit; • Appoint a date for geo-referencing plans to be kept in a land registry; • Depository of maps. 				
	<ul style="list-style-type: none"> • Ensure that the investments in land benefit local communities and their economies; • The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities; • Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management; • Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. 	4 Very Important	<p>Development of community benefits sharing programs.</p> <p>Key partner in grievance management</p>	4 Significant Influence	<p>With regard to grievance management through public hearings:</p> <p><i>Positive</i> by disseminating independently verified information about a project, thus changing negative (misinformed) public perception.</p> <p>Or</p> <p><i>Non-partisan</i> so as to promote transparent processes in the resolution of grievances related to land based resources.</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
National Land Commission (NLC) (cont'd)	<ul style="list-style-type: none"> • Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations; • Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; • Undertake an inventory of all land-based natural resources upon coming into force of the Land Act as stipulated in section 15(3). 	3 Moderate Importance	Relevant to identification and registration of natural resources and community interests on the same	4 Significant Influence	Registration of community rights on physical and cultural resources.
	<ul style="list-style-type: none"> • On behalf of and with the consent of the national and county governments, alienate public land; • Manage the Land Compensation Fund; • Approve compulsory acquisitions, wayleaves, easements and analogous rights; • Make regulations prescribing the criteria for allocation of public land. 	4 Very Important	<p>The main agency driving land acquisition for public good (Compulsory Acquisition).</p> <p>Allows for procedural acquisition of land in accordance with Kenyan law, including the wayleave registration for transmission lines.</p> <p>NLC also plays a role in land and asset valuation for compensation purposes, through the Government Valuer.</p>	5 Very Influential	<i>Non-partisan</i> so as to promote transparent processes in land acquisition for public good.

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Ministry of Lands and Physical Planning	<ul style="list-style-type: none"> • National Lands Policy and Management • Physical Planning • Land Transactions • Survey and Mapping • Land Adjudication • Land Registration • Land and Property Valuation Services Administration • Administration of Public Land as designated by the Constitution • Land Information Systems 	4 Very Important	<p>Information on land ownership with regard to registered land in Kenya under public, community and private land tenure.</p> <p>NLC is a commission under the Ministry of Lands and Physical Planning.</p>	4 Significant Influence	<p>With regard to grievance management through public hearings-</p> <p><i>Positive</i> by disseminating independently verified information about a project, thus changing negative (misinformed) public perception.</p> <p>Or</p> <p><i>Non-partisan</i> so as to promote transparency and justice in processes related to registration of land rights.</p>
Land and Environment Court	<p>The Court has power to hear and determine disputes relating to environment and land, including disputes:</p> <ul style="list-style-type: none"> • Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; • Relating to compulsory acquisition of land; • Relating to land administration and management; 	4 Very Important	<p>The Court plays a role in hearing and ruling on disputes related to community engagement as presented by complainants against a developer and vice versa.</p> <p>Key issues that have been raised in this court in the past relate to public participation, access to information, the right to a clean and healthy environment and compensation.</p> <p>Where the Court is faced by challenges with regard to lack of laws and/or regulations, they have been known to refer the complainants to settle</p>	4 Significant Influence	<p><i>Non-partisan</i> so as to promote transparency and justice in grievances raised.</p> <p>The objective of community engagement however is to avoid the court process through early identification of risks and alternative dispute resolution in the event of unavoidable conflict.</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
	<ul style="list-style-type: none"> • Relating to public, private and community land and contracts or other instruments granting any enforceable interests in land; and • Any other dispute relating to environment and land. 		out of court in good faith, through alternative dispute resolution mechanisms.		
Kenya Electricity Transmission Company (KETRACO)	Plan, design, construct, own, operate and maintain high voltage electricity transmission grid and regional power interconnectors that will form the backbone of the National Transmission Grid.	5 Critical player	<p>KETRACO will be responsible for evacuation of power from the power stations.</p> <p>To the community neighboring a power installation, they may not be clear on, nor care where the mandate of the developer ends and that of KETRACO starts. Lack of project acceptance with regard to transmission lines can also delay the observance of project objectives on sale of the power.</p> <p>Harmonization of community engagement procedures with this agency is therefore critical to social sustainability of projects.</p>	4 Significant Influence	To ensure that power produced can be evacuated through harmonized management of community expectation from both the power plant and the transmission line.

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Kenya Electricity Generation Company (KenGen)	Development of power plants and production of electricity.	U Unknown at this level	For projects where communities have raised issue with power generation plants that are of similar nature and in close proximity to another; combined or coordinated efforts in community engagement are encouraged for clear and consistent messaging to the public.	Moderate to Some Influence	Risk of being perceived by the community as being “guilty through association.”
Other Independent Power Producers	Separately, these actors may not have any interest in a project unless it is adjacent to their power plant.				
Geothermal Development Company	<ul style="list-style-type: none"> • Special Purpose Vehicle (SPV) to accelerate the development of geothermal resources in Kenya. • Development of steam fields and selling geothermal steam for electricity generation to KenGen and to private investors. 				
International Finance Institutions (IFI)	<p>Provision of funds for project development</p> <p>Require compliance with their environmental and social safeguards as well as expectations of “doing no harm” through the development.</p>	5 Critical player	Determination of availability of funds and financial close, with regard to due diligence on compliance with their social and environmental safeguards for sustainable development.	5 Very Influential	<p>By ensuring compliance with their social and environmental safeguards for sustainable development at all stages of the project, communities can appeal to IFIs for mediation and grievance management.</p> <p>Depending on the ruling by the institution, significant non-compliance by the developer can result in cancellation of funding.</p> <p>Communities in Kenya are increasingly becoming aware of their right to call upon the IFIs to resolve issues</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
					<p>arising from projects funded by them.</p> <p>Depending on the response by the IFI, they can have a <i>positive, Non-partisan (as a mediator)</i> or <i>negative</i> influence on relations between a community and the developer.</p>
Kenya National Commission on Human Rights (KNCHR)	Grievance Management where they are mandated to conduct grievance redress, investigate cases and conduct public consultation and training with an aim of reaching a desired common ground for any form of (community) development. KNCHR is involved in grievances related to alleged violations of human rights, including forced evictions, gender-based violence (GBV), extrajudicial killings, unsafe labor conditions, and lesbian, gay, bisexual and transgender (LGBT) discrimination.	2 Some Importance	<p>They only come in when approached in compliance with their legal mandate.</p> <p>However, as Kenyan communities become more exposed and understand their rights with regard to grievance redress, the influence of KNCHR may increase over time.</p>	4 Significant Influence	<p>With regard to grievance management through public hearings:</p> <p><i>Positive</i> by disseminating independently verified information about a project, thus changing negative (misinformed) public perception.</p> <p>Or</p> <p><i>Non-Partisan</i> so as to promote transparent processes in energy development and to promote justice in protection of consumer, investor and other stakeholder interest.</p>
National Gender and Equality Commission	The Commission's mandates include the following: • To promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;	3 Moderate Importance	Can investigate on any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the	4 Significant Influence	<p>With regard to grievance management on gender and discrimination-based issues:</p> <p><i>Positive</i> by disseminating independently verified information about a project, thus changing negative</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
National Gender and Equality Commission (cont'd)	<ul style="list-style-type: none"> Act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children. 		<p>institutions concerned.</p> <p>These investigations can be from the Commission's own initiative or on the basis of complaints.</p>		<p>(misinformed) public perception.</p> <p>Or</p> <p><i>Non-partisan</i> so as to promote transparency and justice in the undertaking of their mandate.</p>
County Government	<p>Devolved form of Government under the 2010 Constitution. There are 47 Counties in Kenya, of which Kajiado, Nakuru, Marsabit, and Turkana are the most known to have potential for renewable energy in the form of wind, solar and geothermal power.</p> <p>Officers charged with roles of importance to private investment in the County are critical stakeholders.</p> <p>Officers charged with roles of importance to private investment in the County are critical stakeholders. Such officers may be a specific County Executive Member (CEM) or a number of CEMs in a County Committee charged with roles and responsibilities in promotion or oversight of private sector investment in the County.</p>	<p>U Unknown at this level as it may change from county to county and project to project</p>	<p>County Governments under the Office of the Governor are the main political institution representing the county within which a project would be located.</p> <p>Approval and licensing of proposed projects in consultation with other county departments. This will involve also verifying that the proposed project has been accepted by the community and adequate and informative consultations have been conducted with the community.</p> <p>Also, play a key role in allocation of community land for development purposes, in accordance with the requirements of the Community Land Act.</p>	<p>5 Very Influential</p>	<p>The various officers and elected leaders in county government have very significance influence (<i>positive or negative</i>) over a community's acceptance of a project, depending on their interests in the County in relation to a proposed development.</p>

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
National Police Service	Ensure security within the project area.	3 Moderate Importance	Inform developers and their staff on security protocols and issues where necessary. However, developers interact with this stakeholder group through the County Commissioner's Office.	Moderate to Some Influence	Engagement of police services during community engagement should be managed to ensure that the community does not feel intimidated by the presence of security forces.
Community Leaders	Legally mandated community representation: • County Government as represented by the Governor (an elected official) and members of the governor's staff (appointed); • Politicians from national and county level. At the national level, politicians include: elected and nominated Members of Parliament, including Women Representatives, and elected and nominated Senators. At the county level, politicians are Members of County Assembly (MCAs).	U Unknown at this level as it may change from county to county and project to project	Inform developers and their staff on security protocols and issues where necessary.	4 Significant Influence	Have mandates in community representation as provided by law. This group of leadership is one of the means of demonstrating community support. Their support should however, never be translated to replace validation of support from the community individuals themselves. <i>Can be positive or negative on a case by case basis.</i>
	Cultural and Socially mandated community representation: • Traditional leaders as recognized by ethnic communities in Kenya; • Socially recognized leaders drawn from educational or religious institutions in the community. Religious leaders stem from Christianity, Islam or traditional religions; • Leaders from mobilized	U Unknown at this level as it may change on a case by case basis		U Unknown at this level as it may change on a case by case basis	Those who hold the community trust as opinion leaders. Their influence may, however, be diminished or increased in some cases more than others and over time. It is important to pro-actively seek gender representation in the other leadership groups, especially where ethnic-based

Stakeholder	Interests with regard to power projects	Importance of Stakeholder with regard to community engagement for power projects		Effect on Community Engagement and power projects	
Community Leaders (cont'd)	groups within civil society such as professional associations, civil rights groups, women's groups, and resident associations; • Opinion leaders drawn from one or a combination of the above institutions.				leadership does not have female representation.
	Individuals with interests in any of the elected leadership positions among the potentially affected persons in a county, constituency or ward. These individuals have been known to raise issues with regard to stakeholder engagement and natural resource use among the grassroots communities.	U Unknown at this level as it may change on a case by case basis	<p>Can have a positive or negative influence over the relationship between the developer and the community.</p> <p>The level of influence by this group also rises toward election year, or when a political scandal has arisen in a community.</p> <p>In some cases, community leaders and/or community members, may voice concern on issues that have not been raised by other elected or recognized community leaders. It is critical to hear these concerns, and to independently corroborate the claims to determine whether and how they should be addressed.</p> <p>In some cases, though certainly not all, community leaders or those claiming leadership roles, may have personal or political interests that conflict with the interests of the community. When engaging with community leaders, it is important to understand such potential conflicts in order to weigh information received from each source accordingly.</p>	U Unknown at this level as it may change on a case by case basis	<p>Those who hold the community trust as opinion leaders.</p> <p>Their influence may however be diminished or increased in some cases more than others and over time.</p> <p>A developer should always be on the look-out to identify and analyze these individuals as they may not be known, or may not come to the fore, until after a project has been well publicized and has garnered the interest of the community.</p>



The Lake Turkana Wind Project sits on 40,000 acres and has a 100,000-acre buffer zone.



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